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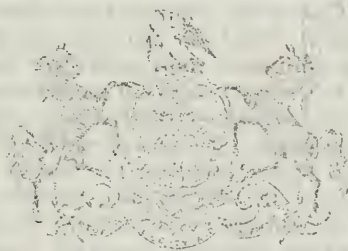


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Edited by

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1874

1874

Narrative of the Matter, as it then past, since has been, and now stands, without the Weakness and Tautology his Relation makes me guilty of.

So soon as I arrived, which was on the 24th of October last, I immediately dispatcht two Persons to the Lord Baltimore, Proprietary of Maryland, with my Respect, to ask of his Health, offer kind Neighbourhood, and agree a Time of meeting, the better to establish it. While they were gone in this Errand, I went to New-York, that I might pay my Duty to the Duke, in the Visit of his Government and Colony: at my Return, which was towards the End of November, I found the Messengers I had sent to Maryland newly arrived, and the Time fixed being the 19th of December, I prepared myself, in a few Days, for that Province; the 11th of that Month, I came to West River, where I met the Proprietor, attended, suitable to his Character; who took that Occasion, by his Civilities, to shew me the greatness of his Power; the next Day, we had a Conference, about our Business of the Bounds, both at the same Table, with our respective Members of Council. The first, Thing I did, was, to present the King's Letter, which consisted of two Parts, one, that the Lord Baltimore had but two Degrees, and the other, that, beginning at Watkins's Point, he should admeasure his said Degrees, at 60 Miles to a Degree. This, being read by him, first privately, then publickly, he told me that the King was greatly mistaken, and that he would not leave his Patent to follow the King's Letter, nor could a Letter void his Patent, and by that he would stand. This was the Substance of what he said from first to last, during the whole Conference. To this I answered, that the King might be misinformed, rather than mistaken, and that I was afraid the Mistake would fall of his Side; for, though his Patent begins at Watkins's Point, and goes to the 40th Degree of North Latitude, yet, it presumed that to lie in thirty-eight, else Virginia would be wronged, that should extend to that Degree; however, this I assured him, that when I petitioned the King for five Degrees North Latitude, and that Petition was referred to the Lords of the Committee of Plantations, at that time, it was urged by some present, that the Lord Baltimore had but two Degrees, upon which the Lord President turning his Head to me, at whose Chair I stood, said, Mr. Penn, will not three Degrees serve your turn? I answered, I submit both the what, and how, to the Honourable Board. To this, his Uncle and Chancellor returned, that, to convince me, his Father's Grant was not by Degrees, he had more of Virginia given him, but, being planted, and the Grant intending only Land not planted or possest but of Savages, Natives, he left it out, that it might not forfeit

the rest, of which the Lord Baltimore takes no notice in his Narrative, that I remember; but, by that Answer, he can pretend nothing to Delaware, that was, at and before, the passing of that Patent, bought and planted by the Dutch, and so could not be given; but, if it were, it was forfeited, for not reducing it during twenty Years, under the English Sovereignty, of which he held it; but was at last reduced by the King, and therefore, his to give as he please it. Perceiving that my pressing the King's Letter, was uneasy, and that I had determined myself to dispose him, with utmost Softness, to a good Compliance. I waved that of the two Degrees, and prest the measurement only, the next Part of the Letter; for, tho' it were two Degrees and half from Watkins's Point to Forty, yet let it be measured at 60 Miles to a Degree, and I would begin at Forty, fall as it would, my Design was, that every Degree, being seventy Miles, I should get all that was over sixty, the Proportion intended the Lord Baltimore by the Grant, and the Computation of a Degree at that time of the day. Thus, he had enjoyed the full Favour intended him, and I had gained a Door, of great Importance to the peopling and improving of this his Majesty's Province: But this, he also rejected; I told him, it was not the Love, or Need, of the Land, but the Water; that he abounded in what I wanted, and had Access and Harboursage even to Excess; that I would not be thus importunate, but for the Importance of the Thing, to save a Province; and, because there was no Proportion in the Concern, if I were hundred times more urgent and tenacious, the Case would excuse it; because the Thing is insisted on, were more than ninety-nine times valuable to me, than to him: To me the Head, to him the Tail. I added, that if it were his, and he gave it me, planting it would recompence the Favour, not only by laying his Country between two thriving Provinces, but the Ships that come yearly to Maryland for Tobacco, would have the bringing of both our People and Merchandize, because they can afford it cheaper, whereby Maryland would, for one Age or two, be the Mart of Trade: but this, also, had no other Entertainment, but hopes that I would not insist on these Things at our next Meeting. After three Days time we parted, and I returned to this Province. When the Spring came, I sent an Express, to pay the time and Place when and where I should meet him, to effect the Business we adjourned to that Time. I followed close upon the Messenger, that no Time might be lost; but the Expectation he twice had, of the Lord Culpepper's Visit, disappointed any Meeting in our Affair, till the Month called May. He, then, sent three Gentlemen, to let me know he would meet me at the Head of the Bay of Chesapeake. I was then in Treaty

with the King of the Natives, for Land, but, three Days after, we met, ten Miles from Newcastle, which is thirty from the Bay; I invited him to the Town, where, having entertained him as well as the Town could afford on so little Notice, and finding him only desirous of speaking with me privately, I prest that we might, at our distinct Lodgings, sett severally, with our Councils, and treat by way of written Memorials, which would prevent the Mistakes or Abuses that may follow from ill Designs, or ill Memory; but he avoided it, saying he was not well, the Weather sultry and would return with what Speed he could; reserving any other Treaty to another Season. Thus we parted, at that time. I had been, before, told by divers, that the Lord Baltimore had issued forth a Proclamation, to invite People, by lower Prices, and greater Quantities of Land, to plant in the Lower Counties, in which the Duke's Goodness had interested me as an inseparable Benefit to this whole Province; I was not willing to believe it; and he, being in haste, I omitted to ask him; but I had not been long returned, before two Letters comes from two Judges of the two County Courts, that such a Proclamation was abroad, that the People adhorr'd to hearken to it, but yet, prayed my Directions. I bid them keep their ground, and not fear, for the King would be Judge. Upon this, I dispatcht, to the Lord Baltimore, three of my Council, with the Clerk of it: as they went, they got an Authentick Copy, under the Hand of one of his Sheriffs, to whom an Original had been directed; but, as the last Civility I could yield him, I forbid them to seem to believe any thing, but what they had from his own Mouth: Thus, they delivered my Letter; at first, he denied any such Proclamation, turning to two Gentlemen of his Council that stood by, asked them, if they remembered any such thing? They also denied it; upon which, the Persons I sent, produced the attested Copy, which, refreshing their Memories, they confessed there was such a Proclamation, but the Lord Baltimore told them, that it was his ancient form, and he only did it to renew his Claim, not that he would encourage any to plant there. They then prayed him to call it in, lest any trouble should ensue, but he refused it. This was, during a Civil Treaty, without any Demand made, and after the Place had been, for many years, in the quiet Possession of the Duke. What to call this, I still humbly refer to my superiors; for his Pretentions to those Parts, I have thoroughly instructed my Agent, who I hope will be able to detect them of Weakness and Inconsistency. This is a true, tho' brief, Narrative of the Entertainment I have had from that Lord, in the Business between us. And because I have, as in Duty bound, sent an Agent Extraordinary, to wait upon the King and his

Ministers, in the Affairs of this Province, (so soon as I Could make any Settlement in it) I shall only humbly pray leave to hint at two or three Things, relating to the Business depending between this Lord and myself, about finding the Fortieth Degree of North Latitude. 1st. That I have common Faine on my side, grounded upon an ancient and constant Judgment, that the fortieth Degree of North Latitude lieth about Pool's Isle; this the Lord Baltimore himself hath not denied, the Country confesseth, and I shall, when required, prove by some able Masters of Ships. 2d. If this were an Error, it is grounded upon such Skill and Instruments as gave measures to the Times in which his Patent was granted; and if he hath got upon Virginia, by that Error, he should not get upon me, by an exacter Knowledge; considering that Carolina, which endeth by Degrees, would as much advance upon Virginia, if the reputed Latitude of unprejudiced Times should take no place; for, by advancing her Bounds twenty Miles, by a new Instrument, beyond the Place which hath generally been taken for $36\frac{1}{2}$; and Virginia not being equally able to advance, upon Maryland, (because of it's beginning at a Place certain) she will be greatly narrowed between both. 3dly. I, therefore, most humbly pray, that the Judgment of Ancient Times, by which Persons, at the Distance of England from America, have governed themselves, may conclude that Lord's Bounds; or, that he may measure his two Degrees according to the Scale and Computation of those Times, which was sixty Miles to a Degree; or, if it be allowed that he had not his Grant by Degrees, that, at least, I might not lose the Benefit of Admeasurement, as before mentioned, from Watkin's Point (in whatsoever Degree of Latitude that shall be found) to the fortieth Degree of North Latitude; which I humbly take the more courage to press, because a Province lieth at stake in the Success of it. I have only humbly to add that the Province hath a Prospect of an extraordinary Improvement, as well by divers Sorts of Strangers, as English Subjects; that, in all Acts of Justice, we name and venerate the King's Authority; I have exactly followed the Bishop of London's Council, by buying, and not taking away, the Natives Land, with whom I have settled a very kind Correspondence. I return my most humble Thanks for your former favours in the passing of my Patent, and pray God reward you. I am most ready to obey all your Commands, according to the Obligations of it, and beseech you to take this Province into your Protection under his Majesty, and him, whom his Goodness hath made Governor of it, into your Favour; for that I am, with most sincere Devotion, Noble Lords, your thankful faithful Friend and Servant to my Power (sign'd) William Penn. This is proved by Mr. Gellibrand, and is Exhibit Botta, No. 20.

Feb. 12.

Memorandum concerning Pensilvania, received and read 12th February 1683. A certain Tract of Land, in America, having been surrendered, long since, by the Dutch to the King, and, ever since, in the Possession of his Royal Highness; His Royal Highness having demised it to William Penn Esq; (lying contiguous to Pensilavnia) at a Rent; the Lord Baltimore now disturbs William Penn, and his Agents there, and opposes the passing of a Patent of it to his Royal Highness here. And, upon a Hearing before the Lords of the Committee of Plantations, it being alleged in the behalf of his Royal Highness, that this Tract of Land was inhabited by Christians, before the Lord Baltimore's Patent, which extended only to Land uninhabited by Christians, it was ordered that they should be ready with Proofs to that Point. It is now desired, in the behalf of his Royal Highness a Day may be appointed to be heard to it. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 21. Fol. 2.

Feb. 12.

Tuesday 12th February 1683. Present Lord Keeper, Earl of Bridgewater, Earl of Clarendon, Mr. Secretary Jenkins. Upon reading a Paper, delivered by the Agent of Mr. Penn, Proprietor of Pensilvania, wherein it is desired, that a Day may be appointed to hear the Difference between the Lord Baltimore and the said William Penn, touching a certain Tract of Land in America, now in the Possession of his Royal Highness. Their Lordships take notice of a Letter, lately received from the Lord Baltimore, wherein his Lordship desires that the Hearing of this Matter may be deferred till April next, when he intends to come into England. Whereupon it is agreed that this Business be postponed until the Month of April next, unless the Agent of the Lord Baltimore be ready to bring the Matter in difference to a Hearing before that time. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 8.

1684. *July 2.*

Wednesday July 2d, 1684. Present Lord Keeper, Lord President, Lord Privy Seal, Duke of Beaufort, Earl of Rochester, Lord Viscount Fouconberg, Lord Dartmouth, Sir Leolin Jenkins. A Letter from Sir Edward Herbert, Solicitor to his Royal Highness, read, representing the Prejudice that his Royal Highness may suffer by a further Delay of the Business now depending before their Lordships, between Mr. Penn Lessee to his Royal Highness, and the Lord Baltimore, for the Lands in Delaware. Whereupon, their Lordships order that the Lord Baltimore's Agent have notice to attend on Wednesday the 16th Instant. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 23. Fol. 9.

July 16.

Wednesday July 16th 1684. Present Lord Archbishop of Canterbury, Lord Keeper, Lord Privy Seal, Earl of Craven, Earl of Nottingham, Earl of Rochester, Lord Bishop of London, Lord Dartmouth, Mr. Chancellor of the Exchequer. The Agents of my Lord Baltimore and Mr. Penn attending, their Lordships appoint to take the matter in difference between them into further Consideration, on Wednesday next, at four in the Afternoon, at which Time all Parties are to attend. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 10.

July 23.

Wednesday July 23d 1684. Present Lord Keeper, Lord President, Lord Privy Seal, Earl of Craven, Earl of Rochester, Mr. Secretary Godolphin, Sir Leolin Jenkins, Mr. Chancellor of the Exchequer. My Lord Baltimore attending, upon the Difference between his Lordship and Mr. William Penn, touching the Boundaries of Maryland and Pensilvania, his Lordship, and Mr. Ford, Agent for Mr. Penn, are called in, and Mr. Ford declaring that he could not be ready for Hearing, because Sir Edward Herbert, Solicitor to his Royal Highness, whose Lessee Mr. Penn is, was gone upon his Circuit, and that he could not get other learned Council: Their Lordships appoint this Matter to be heard the first Tuesday after Michaelmas, at which Time all Parties are to be ready with their Proofs and Evidences of the Right. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 11.

Sept. 30.

Tuesday Sept. 30th 1684. Present Lord Keeper, Earl of Rochester, Lord President of his Majesty's Council, Lord Privy Seal, Earl of Sunderland, Earl of Clarendon, Earl of Craven, Earl of Middleton. My Lord Baltimore, and the Commissioners of his Royal Highness, under whom Mr. Penn claims a Tract of Land about Newcastle in the Province of Delaware, together with their Council learned, are recalled in, and it being alledged by Sir Edward Herbert, his Royal Highness's Solicitor, that the Proofs in this case depend chiefly upon Mr. Penn's coming into England, where he was soon expected, their Lordships appoint the Business to be heard on the 9th Day of December next, at which Time Mr. Penn is expected here. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 12.

1684, *Dec. 9.*

Tuesday December 9th 1684. Present Lord Keeper, Earl of Hutingdon, Earl of Bridgewater, Earl of Sunderland, Earl of Craven, Earl of Middleton, Lord Viscount Fauconberg. The

Difference depending between my Lord Baltimore and Mr. Penn, being appointed to be heard this Day, was put off to another Time. This is proved by Mr. Gellibrand, and is Exhibit Botra, No 22. Fol. 13.

March 17.

Tuesday March 17th 1684. Present Lord Keeper, Lord President, Lord Privy Seal, Duke of Beaufort, Earl of Sunderland, Earl of Craven, Earl of Ailsbury, Lord Viscount Fauconberg, Lord Godolphin, Mr Chancellor of the Dutchy. A Letter from Mr. Penn, dated this Day, is read, praying that he may have an Order for quieting the Possession of the Lands in Delaware, as his Majesty had placed it, till the Difference between Mr. Penn and the Lord Baltimore be heard, but their Lordships do not think fit to do any thing therein. This is proved by Mr. Gellibrand, and is the Exhibit Botra, No. 22. Fol. 14.

1685, *Aug. 18.*

Received from the Earl of Middleton 18th August 1685. Read the same Day. To the King's Majesty. The Petition of William Penn, with all Humility sheweth, That his Petitioner has long waited, to his great Detriment, the Decision of the Matter in Difference between the Lord Baltimore and himself, under the King's Name and gracious Protection, about the Bounds of the Lands which he received from the King when Duke; and, tho' he has been referred to the Issue of the Quo Warranto upon the Lord Baltimore's Patent, yet, since this Stay is of the greatest Prejudice to his Majesty's Province, and a Ruin to his Petitioner and his Family, as he is ready to evince, and that it is about a Title of Land, and not of Power, and so, not the Question the Quo Warranto goes upon; for, that Dispute would remain, tho' the King's Suit about Power were issued; His Petitioner most humbly prays his Case may be recommended to the Lords of Plantations, and a short Day set to hear and determine this Business; and his Petitioner shall ever heartily pray, Signed William Penn. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 21. Fol. 3.

Aug. 18.

Tuesday 18th August 1685. Present, Lord Treasurer, Lord President, Earl of Bridgewater, Earl of Sunderland, Earl of Craven, Earl of Middleton, Lord Godolphin, Mr. Chancellor of the Dutchy. Upon the Petition of William Penn Esq; referred to the Committee, setting forth that the Difference between my Lord Baltimore and the Petitioner, is about a Title of Land, and not of Power, and so not, the Question of the Quo Warranto issued against my Lord Baltimore, and therefore, praying that a short

Day may be set for hearing and determining the same, their Lordships appoint to hear the Difference between the Lord Baltimore and the Petitioner, concerning the Boundaries and Title of Soil in America on Wednesday the 26th of this Month, at 4 in the Afternoon, and order Notice thereof to be given to both Parties accordingly. This is proved by Mr. Gellibrand, and is the Exhibit Botra, No. 22. Fol. 15.

Aug. 26.

Thursday the 26th of August 1685. Present, Lord Treasurer, Lord President, Earl of Bridgewater, Earl of Craven, Earl of Nottingham, Lord Viscount Fauconberg, Lord Bishop of London, Earl of Middleton, Mr. Chancellor of the Dutchy. The Lord Baltimore and Mr. Penn attending, upon the Differences between them, touching Boundaries, and Title of Soil, in America, are called in, and their Lordships appoint to hear this Business on Wednesday the 2d of the next Month, when both Parties agreed to attend without Council. This is proved by Mr. Gellibrand, and is the Exhibit Botra, No. 22. Fol. 16.

Sept. 2.

Tuesday the 2d of September 1685. Present, Lord President, Lord Privy Seal, Earl of Bridgewater, Earl of Craven, Earl of Middleton, Lord Viscount Fauconberg. The Lord Baltimore and William Penn Esq; attending, this Day, according to Order, upon the Difference between them, and the Boundaries of Land, and Title of Soil, in America: And Mr. Penn having produced divers Proof, to make out that the Country of Delaware was inhabited by the Swedes and Dutch before the Date of my Lord Baltimore's Patent: It is thought fit that Copies be given to the Lord Baltimore, of the said Evidences and Proofs, that his Lordship may be prepared to make his further Defence before the 30th of this Instant September; on which Day their Lordships resolve to take this Matter again into Consideration. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 17.

Octob. 8.

Thursday the 8th of October 1685. Present, Lord Jefferys, Lord High Chancellor of England, Lord Treasurer, Lord President, Lord Privy Seal, Earl of Mulgrave, Lord Chamberlain, Earl of Sunderland, Earl of Craven, Lord Bishop of London, Master of the Ordnance. My Lord Baltimore and Mr. Penn attending, are called in, and both Parties being heard, my Lord Baltimore gives their Lordships an Account that, in the Year 1642, one Ployden sailed up Delaware River, and did not see any House there at that time, as is affirmed by a Deposition produced by Mr. Penn; and the Copy of a Report of the Com-

missioners of Foreign Plantations, on the 4th of April 1638, touching the Differences between the Lord Baltimore and Mr. Clayborn, about the Isle of Kent, is offered by my Lord, shewing their Opinion touching the Lord Baltimore's Right to the Isle of Kent: After which, the Deposition of Mr. Garret Van Sweeringen concerning the seating Delaware Bay and River to the Southward of the 40th Degree Northern Latitude, by the Dutch and Swedes, read. Whereupon their Lordships think fit that my Lord Baltimore procure an attested Copy of the fore-mentioned Reports, against Thursday next, when their Lordships will take this Matter into further Consideration. This is proved by Mr. Gellibrand, and is Exhibit Botra No. 22. Fol. 18.

Octob. 17.

Saturday October 17th 1685. Present, Lord Chancellor, Lord Treasurer, Lord Privy Seal, Duke of Beaufort, Lord Chamberlain, Earl of Sunderland, Earl of Craven, Earl of Middleton, Lord Dartmouth, Mr. Chancellor of the Exchequer. My Lord Baltimore and Mr. Penn are called in, and my Lord Baltimore having undertaken to procure an authentick Copy of a Report, made by the Commissioners for Foreign Plantations on the 4th April 1638, touching the Differences between my Lord Baltimore's Predecessors and William Clayborne, about the Isle of Kent, my Lord Baltimore declares that he cannot find the Original, whereby an attested Copy may be procured; Their Lordships agree to report their Opinions, that the Tract of Land, now in Dispute, does not belong to my Lord Baltimore; but, in as much as it yet remains doubtful, what are the true Boundaries of the Land called Delaware, which their Lordships now adjudge to belong to his Majesty, their Lordships will meet again for the Settlement of those Boundaries between his Majesty, and the Lord Baltimore; at which time his Lordship and Mr. Penn are to give their Attendance, and to come prepared for a final Decision therein. This is proved by Mr. Gellibrand, and is Exhibit Botra No. 22. Fol. 20.

Octob. 31.

Saturday October 31st 1685. Present, Lord Chancellor, Lord Privy Seal, Lord Chamberlain, Earl of Sunderland, Earl of Craven, Earl of Berkeley, Earl of Plimouth, Earl of Middleton, Lord Viscount Preston, Mr. Chancellor of the Exchequer. My Lord Baltimore and Mr. Penn attending, are called in, and their Lordships taking into Consideration what might be the proper Boundaries of the Country of Delaware, now in Question, it is proposed that the whole Peninsula, or Tract of Land, called Delaware, from East to West, as far as Cape

Hinlopen Southward, may be divided into two equal Parts, between his Majesty and my Lord Baltimore. Whereupon, his Lordship, desiring further time, to consider of this Proposal, the Committee allow him a Week longer, to offer his Objections. This is proved by Mr. Gellibrand, and is the Exhibit Botra No. 22. Fol. 21.

Noc. 7.

Saturday November 7th 1685. Present Lord Privy Seal, Earl of Bridgewater, Earl of Sunderland, Earl of Craven, Earl of Middleton, Lord Viscount Fauconberg, Mr. Chancellor of the Exchequer, Lord Chief Justice Herbert. My Lord Baltimore and Mr. Penn attending, concerning the Boundaries of the Country of Delaware, are called in; and being heard, their Lordships resolve to report their Opinion, to his Majesty, That, for avoiding further Differences, the Tract of Land, lying between the River and Bay of Delaware, and the Eastern Sea, on the West side, and Cheasepeak Bay on the other, be divided into two equal Parts, by a Line, from the Latitude of Cape Hinlopen, to the 40th Degree of Northern Latitude; and, that one half thereof, lying towards the Bay of Delaware and the Eastern Sea, be adjusted to belong to his Majesty; and that the other half remain to the Lord Baltimore, as comprised within his Charter. This is proved by Mr. Gellibrand, and is Exhibit Botra No. 22. Fol. 22.

Note well.

This Determination was made by Agreement of Parties, as it were, it having been before proposed to the Parties, and Time given them to consider thereof,

And this Report abundantly fixes the North Bounds of Maryland to be at the Head of Chesapeake Bay; for the Peninsula, which was so to be divided, although it had three Boundaries on the one side, namely, the River and Bay of Delaware, and the Eastern Sea, yet it had no Boundary on the other side but Chesapeake Bay only.

Again, this Report fixes, very materially for us, that the South Bounds of the lower Counties were to be from Cape Hinlopen. And the first Dutch Record, of the Year 1630, shews that was 8 large Miles, (viz. 8 Leagues) South of Delaware Bay. Besides which, Cape Hinlopen mentioned in this Report, could not be (as my Lord Baltimore now pretends) at the Mouth or Entrance of Delaware Bay; for, if so, there was no occasion to describe the Eastern Sea as Part of the Boundary of the Peninsula, which in fact it was not, in such Case, but, on the contrary, the River and Bay of Delaware would have been the only Eastern Boundaries, had Cape Cornelius been the true and ancient Cape Hinlopen.

Nov. 13.

At the Court at Whitehall the 13th Day of November 1685. Present, The King's Most Excellent Majesty, His Royal Highness Prince George of Denmark, Lord Archbishop of Canterbury, Lord Chancellor, Lord Treasurer, Lord Privy Seal, Duke of Ormond, Duke of Beaufort, Duke of Queensberry, Lord Chamberlain, Earl of Huntingdon, Earl of Bridgewater, Earl of Peterborough, Earl of Sunderland, Earl of Craven, Earl of Berkeley, Earl of Nottingham, Earl of Plymouth, Earl of Morray, Earl of Middleton, Lord Viscount Fauconberge, Lord Viscount Preston, Lord Viscount Melfort, Lord Bishop of London, Lord Dartmouth, Lord Godolphin, Mr. Chancellor of the Exchequer. The following Report, from the Right Honourable the Lords of the Committee for Trade and Foreign Plantations, being this Day read at the Board; The Lords of the Committee for Trade and Plantations having, pursuant to his late Majesty's Order in Council of the 31st of May 1683, Examined the Matters in difference between the Lord Baltimore and William Penn Esq; in behalf of his present Majesty, concerning a Tract of Land, in America, called De la Ware, Their Lordships find that the Land, intended to be granted to the Lord Baltimore's Patent, was only Land uncultivated and inhabited by Savages. And that this Tract of Land, now in Dispute, was inhabited and planted by Christians, at and before the Date of the Lord Baltimore's Patent, as it hath been, ever since, to this Time, and contained as a district Colony from that of Maryland; so that their Lordships humbly offer their Opinion, that, for avoiding further Differences, The Tract of Land, lying between the River and the Eastern Sea, on the one Side, and Chesapeake Bay, on the other, be divided, into equal Parts, by a Line, from the Latitude of Cape Hinlopen, to the 40th Degree of Northern Latitude; and that one Half thereof, lying towards the Bay of Delaware and the Eastern Sea be adjudged to belong to his Majesty, and that the other Half remain to the Lord Baltimore, as comprised within his Charter. Council Chamber 7th of November 1685. His Majesty, well approving of the said Report. It was, thereupon, Ordered, by his Majesty in Council, That the said Lands be forthwith Divided accordingly. Whereof the said Lord Baltimore and William Penn Esq; together with their respective Officers, and all others whom it may concern, are to take Notice, and give due and ready Obedience thereunto. This is proved by Dickinson, and is Exhibit Co-off. No. 4.

Note.

And thus ended this first Contest wherein many Things clearly appear. 1. That Lord Baltimore and his Council were fully heard, Great Numbers of Times, and had such Indulgence that

they ordered him Copies of Mr. Penn's Proofs. 2. That, throughout the whole Process, it is, from time to time, taken notice of as a Dispute between Lord Baltimore and Mr. Penn, and is expressly called so in the Minutes and Acts of Council, although at the same time Mr. Penn did hold under the Duke's Deeds and Covenants, and under Rent to the Duke, and, therefore, additionally, took into his aid the Duke's Name and Right. 3. That it was, in this Contest, that the then Lord Baltimore first trump up the pretended Order of Council about Clayborne of 4 April 1638, and then gave it up again. 4. That there was a flat Judgment against Lord Baltimore, that Delaware, (the Tract of Land then in Dispute) did not belong to him, and the only Doubt was, What were the true Boundaries of Delaware? 5. That a Proposition was made then, for Peace sake, and to prevent further Differences, how it should be bounded, and Time given to Lord Baltimore to offer any Objections to that Proposal. 6. That the Order, then made, for a Division, was to extend Southwards, down to Cape Hinlopen, and Northwards, not a Hair further than to the Head of Chesapeak Bay, (whereas, now, we have granted him a great many Miles higher than that) For, The Land, which was to be divided, was such as lay between Delaware River and Bay, and the Sea, on one Hand. and Chesopeak Bay, on the other. 7. Another Matter which confined the Northern End to that dividing Line is very express and remarkable, and falls in exactly with our Construction of Lord Baltimore's Patent and with the express Words of the Pensilvania Patent: for, that Dividing Line was, by this Order, to run from the Latitude of Cape Hinlopen to the 40th Degree of Northern Latitude; but not, through all that Degree, up to the 41st Degree. 8. All the World understood this as a Judgment in the Favour of Mr. Penn, who was all along said to have been a Party in the Contest; Indeed, nominally, it was said one Half should belong to his Majesty, the Duke of York being then become King. But, the very Order, itself, is directed to my Lord Baltimore and William Penn Esq; and their respective Officers, to take notice of it, and give due Obedience to it; and, had the King and Council intended to have tript up the Tenant Mr. Penn's Title, it had been a little hard and unnatural to have ordered him to run a Line, in order to get Land meerly for the King, but not for himself.

If it be askt why, after this Determination was made, Mr. Penn did not get further Assurance from the King? The Answer is, that tho' it was agreed and ordered how the Lower Counties should be divided, yet, the Line of Division was not run, but was still to be done. And even yet remains to be done. We hoped to have done it by means of the Agreement of 1732,

but that Agreement the Defendant will not execute. And, till the Division Line should be run, no regular Conveyance could be made. And that Division Line not being run in that King's Time, (who abdicated before the 7 Years which were mentioned in his Covenant expired) Mr. Penn therefore could not, at any Time hitherto, apply for further Assurance.

CHAP. VIII. *From the first Determination of the King in Council of the 13th of November 1685, down to the second Determination in the Plaintiffs Favour in the Year 1768.*

1685, Dec. 10.

From the Records in Sussex County. At a Court held in the Name of William Penn Proprietary and Governor of Pensilvania, and the Territories, at Lewes for the County of Sussex, the 8, 9, and 10th Days of December 1685, Iwottama Samam, the Indian Shackamaecker of Assawawmat, signed, sealed and delivered an Indenture of Sale for 1000 Acres of Land to Norton Claypoole, called the Indian Grove, scituate on the South side of the Indian River, and acknowledge the Sale thereof to the said Claypoole, according to the Indenture of Sale signed in the Docket by Justice Watson, one of the Members of the Court. Also the same Shackamaecker signed, sealed and delivered an Indenture of Sale for 500 Acres of Land, scituate on the North side of the Indian River, to Matthew Taylor Merchant of New York, and acknowledged the Sale thereof according to the Indenture of Sale. Sussex Records, No. 17. Fol. 26.

Note.

Neither of these Indentures appear: neither are they said to be recorded. This shews, however, that Courts were held in Mr. Penn's Name, that those Courts exercised Jurisdiction on both sides of Indian River, and that the Lands, about Indian River, were not then settled, but were, piece by piece, bought, from time to time, from the Indians then. And you remember there was an Order of Sussex Court made on 1 January 1680, that none should seat down on Lands, till they brought the Indians to Court to acknowledge they had sold those Lands. 1686, Sept. 14-16.

From the Sussex Records, an Indenture made in the 7th Year of the Proprietary Government, between John Oakie of the County of Sussex in the Territories of the Province of Pensilvania of the one Part, and John Barker of the other Part, It recites the forementioned Grant, from Proprietary Penn's Commissioners, to John Oakie, dated the 27th of January 1684, of Mulatto Hall, on the South side of Indian River, containing

800 Acres, now the said Oakie, in Consideration of 30*l.* alienates unto John Barker 400 Acres, being one Moyety thereof; with Warranty against all Persons, the Rents from henceforth to grow due to the Proprietary only excepted. And there is an Act of the Court held at Lewis for the County of Sussex the 14, 15 and 16th of September 1686, endorsed on the said Deed, and signed by the Clerk of the Court, that Oakie acknowledged that Sale and Conveyance according to the Contents there within written. Sussex Records, No. 17. Fol. 30. 31.

4^o *Will. & Maria*, 1691. Oct. 25.

From the Chappel of the Rolls, a Commission under the Great Seal, from King William and Queen Mary, to Benjamin Fletcher Esq; It recites that Colonel Fletcher had, by Letters Patent under the Great Seal of the 18th of March then last, been appointed Governor of New York. It also recites, Fol. 4. That, by reason of great Neglects and Miscarriages in the Government of our Province of Pensilvania in America, and the Absence of the Proprietor, the same was fallen into Disorder and Confusion; by means whereof not only the Publick Peace and Administration of Justice (whereby the Crown's Subjects should be preserved in those Parts) was broken and violated, but there was also great Want of Provision for the Guard and Defence of the said Province against the Enemies of the Crown, whereby the said Province, and the adjacent Colonies, were much exposed, and in Danger of being lost from the Crown of England.

For the Prevention whereof as much as in us lies, and for the better Defence and Security of our Subjects inhabiting those Parts, during this Time of War, we find it absolutely necessary to take the Government of our Province of Pensilvania into our own Hands, and under our immediate Care and Protection.

Therefore constituted and appointed Colonel Fletcher to be Captain General and Governor in Chief in and over our Province of Pensilvania and Country of Newcastle and all the Tracts of Land depending thereon in America; and commanded him to take the said Province and Country under his Government.

And, for the better governing and ruling the said Province and Country, and the Tracts and Territories depending thereon, their Majesties gave and granted unto the said Colonel Fletcher, all and every the like Powers and Authorities, as by the former Commission was given and granted to him for the ruling and governing of New York; To be exercised, in like manner, by Colonel Fletcher, in and over our said Province of Pensilvania and Country of Newcastle, and the Territories and Tracts of Land depending thereon in America.

And to appoint, and suspend, a Lieutenant Governor, and a Council there.

To hold, exercise and enjoy the said Office and Place of Captain General and Governor in Chief in and over our Province of Pensilvania and Country of Newcastle, and the Territories and Tracts of Land depending thereon in America, during our Will and Pleasure. This Copy is proved by Mr. Bulmer and is Exhibit Rocha, No. 7.

Note.

This Commission was proved not so much with any design to make use of it in our favour, as to obviate any Objection that might be made against us, that the Crown, once, took the Government from Mr. Penn; which, you are pleased to observe, was not of the lower Counties only, or upon account of any Defect of Title in Mr. Penn, but, for Reasons of State; and the Crown took the Government of Pensilvania itself from Mr. Penn, as well as that of the Lower Counties. Indeed, King William did not greatly confide in Mr. Penn, nor in the then Lord Baltimore (who was a Roman Catholick) and his Majesty wanted both their Governments into his own hands. Sundry Lawyers Opinions were taken thereon, at length, the Crown was advised that, for Reasons of State, it might be done; and thereupon, for Reasons of State it was done, both as to Mr. Penn and Lord Baltimore also. But Mr. Penn so very well cleared himself to the Satisfaction of the Crown that his Government was restored to him in less than 22 Months from the Date of this Commission, even during that War: Whereas the Crown kept the Government of Maryland in their own Hands, above 25 Years, from 1691 to 1716, before they restored that to the Lord Baltimore.

1692, *Noc.* 10.

From the Records in Sussex County an Indenture of this Date between John Barker of the County of Sussex annex unto the Province of Pensilvania and Peter Waples late of the County of Somerset in the Province of Maryland, but now of the fore-said County of Sussex Planter; reciting Patent granted by Proprietary Penn's Commissioners on 25 September 1691, unto one Richard Patte deceased, of a Tract of Land on the South side of the Indian River at the Head of a Neck of Land called Pine-Neck in the said County of Sussex, containing 300 Acres of Land, and that John Patte, Son and Heir of Richard Patte, had conveyed the same to the said John Barker; now the said Barker, for 4500 Pound of Tobacco, conveys the same to the said Peter Waples, warranted against all Incumbrances, the Rents from henceforth to grow due to the Proprietor only excepted.

With an Endorsement thereon attested by the Clerk of the Court that at a Court held at Lewis for the said County of Sussex on 5th September 1694, Barker acknowledged that Deed in open Court. Sussex Records, No. 17. Fol. 32. 33.

6^o *Will. & Maria*, 1693, *Aug.* 20.

From the Chapell of the Rolls, a Commission under the Great Seal to William Penn Esq; recites that, upon Information that by reason of great Miscarriages in the Government of our Province of Pensilvania in America, and the Absence of the Proprietor, the same was fallen into Disorder and Confusion, by means whereof not only the Publick Peace and Administration of Justice was broken and violated, but there was also great want of Provision for the Guard and Defence of our said Province against our Enemies, whereby it was apprehended that our said Province and the adjacent Colonies were much in danger of being lost, from the Crown of England; For Prevention whereof, as much as in us lay, and for the better Defence and Security of our Subjects inhabiting those Parts during this time of War, we found it absolutely necessary to take the Government thereof into our Hands, and into our immediate Care and Protection, and did, thereupon, by Letters Patent of 21st October in the 4th Year of our Reign constitute and appoint Benjamin Fletcher Esq; our Captain General and Governor in Chief in and over our said Province of Pensilvania and Country of Newcastle and all the Territories and Tracts of Land depending thereon in America, &c. And whereas humble Application has been made unto us, by our trusty and well beloved William Penn Esq; Proprietor of our said Province of Pensilvania, that he may be restored to the Administration of the Government thereof, as formerly, And whereas the said Proprietor has given us good Assurance that he will take care of the Government of our said Province and Territories, and provide for the Safety and Security thereof all that in him lies. We have thereupon thought fit to restore him to the Administration of the Government of our said Province and Territories; And accordingly our Will and Pleasure is that so much of our said Commission, bearing Date 21 October in the 4th Year of our Reign, as appointed Colonel Fletcher Governor of our said Province of Pensilvania, Country of Newcastle, and the Territories and Tracts of Land depending thereon in America, together with all the Powers, &c. thereby granted for the ruling and governing of our said Province and Country, do, from the Publication of these our Letters Patent, cease, determine and become void: And accordingly, the same are hereby declared void; Of which all Persons whom it may concern are to take notice

and govern themselves accordingly under Pain of our higher Displeasure. This is proved by Mr. Bulmer, and is Exhibit Rocha No. 8.

Note.

So that here the Crown layd no Claim to the Government of the Lower Counties, but restored the Government of the Territories to Mr. Penn, as formerly.

Sept. 5.

From the Sussex Records, an Indenture between William Clark of the County of Sussex annex unto the Province of Pennsylvania, Merchant, of the one Part, and Peter Waples of the aforesaid County of the other, reciting that Proprietary Penn's Commissioners did by their Patent of 7 September 1691, grant to the said William Clark a Tract of Land, on the South side of Indian River, in the said County of Sussex containing 400 Acres. Now for the Consideration of 4300 Pound of Tobacco Clark conveys the same to Waples, free of all Demands, the Rents and Services from henceforth to grow due to the Proprietor and Government only excepted. With an Endorsement signed by the Clerk of the Court that Clark acknowledged that Deed in open Court held at Lewis for the said County of Sussex upon 5 September 1694. Sussex Records, No. 17. Fol. 34.

1694, March 6.

At a County Court or Court of Common Pleas held in their Majesties Names at Lewis for the County of Sussex on the 6th and 7th Days of March 1694, before the Justices of the said Court, after several Proceedings there stands recorded thus. The Court caused a Letter to be written, to the Justices in Maryland, relating to some Difference between the two Governments; and ordered the Clerk to record the Letter, which follows there, and is to this Effect; We their Majesties Justices of the Peace, in Court sitting, are given to understand that John Barker and Charles Tindall, Inhabitants on the South side of Indian River, within this County and Government, stand bound over to your Quarter Sessions, for not owning the Authority of your Government, thought fit to signify to you that most of the Lands, on the said South side of the said Indian River, and particularly the Lands that they live upon, were taken up, and surveyed by Grant, when this Place was under the Government of New York, and since patented under William Penn Esq; absolute Proprietary; and that the said above-named Persons possess their said Lands by the said Right; and have, all along, paid Rents and Duties unto the said Proprietor and Government; And whereas some of your County have pretended something of an Order of King and Conneil, that the Tract of Land, lying between the

River and Bay of Delaware on the one side, and Chesapeake Bay on the other side, be divided in two equal Parts, by a Line, from the Latitude of Cape Inlopen, to the 40th Degree of Northern Latitude, and that one half thereof lying towards Chesapeake Bay remain to the Lord Baltimore, and that half Part lying towards the River and Bay of Delaware unto William Penn Esq; But, if any apprehend so, they are under a great Mistake, for, the Order of King and Council is, That, for avoiding further Differences, the Traet of Land lying between the River and Bay of Delaware and the Eastern Sea on the one part, and Chesapeake Bay on the other, be divided into equal Parts, by a line from the Latitude of Cape Henlopen to the 40th Degree of Northern Latitude, and that one half thereof, lying towards the River and Bay of Delaware and the Eastern Sea be adjudged to belong unto his Majesty, and that the other half remain to the Lord Baltimore as comprised within his Charter. Now, some of your Government have, also, alledged that Cape Henlopen, and Cape Inlopen, are one and the same Cape, which, likewise must be a great Error: for, if so, there had been no need for the King and Council to have mentioned the Eastern Sea in the said Order. All which, being duly deliberated, Quere, Whether it be not most fit to abstain all Acts of Violence, and Breach of good Neighbourhood, on either part, till such time as the Division be made and completed according thereto; which we believe will not be long. These things we have agreed to offer to your Consideration, and may conduce to the Relief of the said Barker and Tindall. Sussex Records, No. 17. Fol. 35. 36.

7 & 8^o Will. 3rd, 1696.

An Act of Parliament was past, for preventing Frauds and regulating Abuses in the Plantation Trade, which contained many new Regulations for the Plantations in divers Respects. By the 4th Clause, all Governors in the Plantations were to take an Oath to observe the Acts of Trade. By the 9th Clause, all Laws of the Plantations contrary to the Acts of Trade therein mentioned then in Being, or repugnant to the then present Act, or to any future Act which should relate to the Plantations, were declared null and void. By the 12th Clause Places of Trust in the Colonies were to be in the hands of native-born Subjects. By the 16th Clause Persons claiming a Right or Propriety in any Islands or Tracts of Land on the Continent of America by Charter or Letters Patent should not alien or sell the same other than to the natural born Subjects of England, Ireland, Wales, or Berwick upon Tweed, without Licence from the Crown by Order in Council. And by the latter Part of the same Clause. "All Governors nominated and appointed by

"any such Persons or Proprietors who shall be intitled to make
 "such Nomination, shall be allowed and approved of by his
 "Majesty, his Heirs and Successors as aforesaid, and shall take
 "the Oaths appointed by this or any other Act to be taken by
 "the Governors or Commanders in Chief in other his Majesty's
 "Colonies and Plantations, before their entering upon their re-
 "spective Governments, under the like Penalties as his Majesty's
 "Governors and Commanders in Chief are by the said Acts
 "liable to." Printed Act of Parliament 7 & 8 W. 3.

8th & 9th Will. 3d, 1696.

An Act of Parliament was past intitled, An Act for making good the Deficiency of several Funds, &c. and for enlarging the Capital Stock of the Bank of England, &c. By a Clause wherein, the foregoing Clause in the last Act of Parliament is recited, and that thereby all the then present Governors and Commanders in Chief of any English Colonies and Plantations were, before the 25th of March 1697, and all who should be made Governors, before their entring into their Government should take an Oath to observe the Acts of Trade therein mentioned. Now, further Time is given for administring that Oath, to the then present Governors, and such Oath was to be taken before such Persons as his Majesty should appoint. Printed Act of Parliament 8. & 9. W. 3.

9^o Will. 3th, 1697. Apr. 30.

A Commission under the Great Seal of England entred upon the Records of Pensilvania directed to Edward Randolph, Robert Quarry, Richard Holliwell, Edward Chilton, John Moor and Jasper Yeates, Esquires or any 5 of the Members of the Council, and the Collector of our Customs for the time being, within our Province of Pensilvania, reciting the said Clause in the Act of the 8th and 9th of King William. And reciting that the Persons appointed to administer the said Oath were by some Accidents prevented from performing the same within the Time limited by the said Act; To the end the good Intent of the said Act might not be disappointed for want of time to put the same in Execution, it had been enacted that further Time should be allowed for administring the said Oath, the King therefore appoints and authorizes the said Persons, or any 3 or more of them, to administer the Oath thereunto annexed, unto the Governor or Commander in Chief of the said Province of Pensilvania. Pensilvania Records, No. 7. Fol. 4. *March 17.*

From the Pensilvania Records Copy of an Entry of an Endorsement on the said Commission, that by vertue of those Letters Patent, William Markham Esq; Governor under William

Penn Esq; absolute Proprietor of the said Province and Territory thereunto belonging, made Oath as was therein directed, signed by 4 of the Commissioners. Pensilvania Records, No. 7. Fol. 6.

1698, *May* 27.

From the Pensilvania Records, Copy of an Entry of another Endorsement on the said Commission, that William Markham, Lieutenant Governor of the said Province (by vertue of a late Commission, granted to him by William Penn, absolute Proprietor and Governor of the said Province and Territories thereunto belonging) took the Oath there within directed, in full Council, held at Philadephia; because a Quorum of the Commissioners (expresly) named in that Commission could not be got together at that time. Pensilvania Records, No. 7. Fol. 6.

Note.

In such Case the Commission was directed to the Members of the Council.

1700, *Sept.* 13.

From the Pensilvania Records an Indian Deed, whereby Widaagh alias Orytaah, and Andaggy-junkquogh, Kings or Sachemas of the Susquehannagh Indians, and of the River under that Name, and Lands lying on both sides thereof, do declare that, in Consideration of a Parcel of Indian Goods, to them given by their Friend and Brother William Penn, Proprietary and Governor of Pensilvania, and also in Consideration of the former much greater Costs and Charges the said William Penn had been at in treating about and purchasing the same, did give, grant and confirm unto the said William Penn,

All the said River Susquehannagh, and all the Islands therein, and all the Lands scituate lying and being upon both sides of the said River and next adjoining to the same, extending to the utmost Confines of the Lands which are, or formerly were, the Right of the People or Nation called the Susquehannagh Indians, or by what Name soever they were called or known; and also all Lakes, Rivers, Rivulets, Fountains, Streams, Trees, Woods, Underwoods, Mines Royal and other Mines, Minerals, Quarries, &c. and other Royalties, Privileges and Powers, whatsoever, to them or any of them belonging, or by them enjoyed, as fully and amply in all respects as they, or any of their Ancestors, had or could have held and enjoyed. And all the Right, Title, Interest, Possession, Claim and Demand of them, or the said Nation, or any in Right of the same.

And do hereby ratify and confirm unto the said William Penn the Bargain and Sale of the said Land, made unto Colonel

Thomas Dongan, now Earl of Limerick, and formerly Governor of New York, whose Deed of Sale to the said Governor Penn, we have seen. To hold the said River, Lands and Premises to Mr. Penn in Fee. Pensilvania Records, No. 7. Fol. 6.

1701, *Apr.* 23.

From the Pensilvania Records, Copy of Articles of Agreement between William Penn, Proprietor and Governor of the Province of Pensilvania and Territories thereunto belonging, on the one Part, and Connoodaghtoh, King of the Indians inhabiting upon and about the River Susquehannah in the said Province, and Widaagh alias Orettyah, Koquecash, and Andaggy Junkquagh, Chiefs of the said Nations of Indians, and Wopaththa, King, Lemoyeungh and Pemoyajooagh, Chiefs of the Nations of the Shawonnagh Indians, and Abookassooough, Brother to the Emperor, for and in behalf of the Emperor, and Wewhinjouh, Cheequittah, Jakyewsan, and Woopackoa, Chiefs of the Nations of the Indians inhabiting in and about the Northern Part of the River Pottomock in the said Province, for and in behalf of themselves and Successors, and their several Nations and People, on the other Part. That as there always had been a good Understanding and Neighbourhood, between Mr. Penn and his Lientenants, ever since his first Arrival in that Province, and the several Nations of Indians inhabiting in and about the same, so it agrees that there should be, for ever, a firm and lasting Peace continued between them, and they should live as one Head and one Heart, in true Friendship and Amity, as one People. And many particular Clauses there are therein, for doing Justice to each other, and that the Indians, whilst they lived near or among the Christian Inhabitants, should observe the Laws of the Government, and have the Privileges thereof, as any other Inhabitants. They acknowledging the Authority of the Crown of England, and Government of that Province; and several Clauses about Trade. And the Indians of Conestogo ratify the Indian Sale made to Mr. Penn the 13th of September last. Pensilvania Records, No. 7. Fol. 7.

Now Mr. Penn came over from Pensilvania and appointed a new Lientenant Governor, for the first time, after the Act of Parliament of the 7th and 8th of King William had been made, But from 1682, to this Time Mr. Penn had governed the Lower Counties by himself and his Deputies without signing any Declaration to the Crown.

1702, *Nov.* 11.

The Board of Trade made a Representation to the Queen in Council, that they had, in Obedience to the Queen's Commands, signified to them by Secretary Hedges, upon the Petition of Mr.

Penn, that Colonel Andrew Hamilton, appointed by him to be Deputy or Lieutenant Governor of Pensilvania, might have her Majesty's Approbation for the executing of that Trust, for one Year only, lately represented to her Majesty, before, that, having been informed the said Hamilton had been a Favourer of illegal Trade with Scotland and other Parts, they did not think it for the Queen's Service that he should receive the Queen's Royal Approbation as Lieutenant Governor of that Province. But the Queen having, now, signified to them her gracious Inclination to gratify Mr. Penn in his present Request, and considering the absolute Necessity which he alledges for a temporary Approbation of the said Hamilton, their Lordships humbly offer that Security be given to her Majesty in 2000*l*. at least, by Mr. Penn, or other Persons, for Hamilton's duly observing the Acts of Trade, &c. as is usually done for the Proprietary Governments; "provided always that your Majesty's Favour herein be not construed or extended in any manner to diminish or set aside your Majesty's Right and Title to the three lower Counties upon Delaware River adjoining to Pensilvania [Note these last Words are more softened upon future Approbation]; And their Lordships take this occasion to pray the Queen's Order to Mr. Penn that he be obliged to return a speedy Answer in Writing to four Queries which they had delivered to him in May last, which much imported the Good of the Trade and Settlement of those and the neighbouring Parts. Co. Off. No. 5.

Same Day.

The Queen's Order in Council, stating that Representation verbatim, and approving the same, and declaring her Majesty's Allowance of the said Andrew Hamilton to be Deputy Governor for the said William Penn, of her Majesty's Province of Pensilvania, and Territories thereunto annex, for one Year only; provided that the usual Security be first given as aforesaid that Hamilton shall duly observe the Acts for better regulating the Plantation Trade, and obey such Instructions, relating thereunto, as he shall receive from her Majesty, or any acting under her Authority; And provided also that the said William Penn do forthwith return to the Lords of Trade an Answer to the said four Queries; And do further declare, under his Hand, that her Majesty's said Allowance shall not be construed in any manner to diminish or set aside her Majesty's Right and Title to the three Lower Counties upon Delaware River; And the Lords of Trade are to take care that good and sufficient Security be given to her Majesty as aforesaid. Co. Off. No. 5.

Jan. 21.

Another Representation from the Lords of Trade to the Queen in Council, That pursuant to the last Order they had required from Mr. Penn the several previous Conditions which were therein exprest, and having received from him a Certificate of Security, given in her Majesty's Remembrancer's Office, for 2000*l.* for Hamilton's observing the Acts of Trade, in the same Form as had been done for other Proprietary Governments. As likewise a Declaration and Promise under Mr. Penn's Hand, that the Queen's Royal Approbation and Allowance of the said Hamilton to be Deputy Governor of the said Province and Territories should not be construed in any manner, to diminish or set aside her Majesty's Claim of Right to the said three lower Counties upon Delaware; and also his Answer to the four Queries; and that their Lordships were, then, considering, (upon the said Queries and Answer) the ascertaining of one current Rate or Value of Coin in the Plantations on the Continent of America. also, the Pretentions and Claim of Mr. Penn to the Power of Government in the three lower Counties; and, in the mean time, they conceived it absolutely necessary for her Majesty's Service in those Parts, and agreeable to the Charter granted to Mr. Penn, that all Persons in Judicial, or any other Offices in Pensilvania and the said Lower Counties, should be obliged to take the Oath or Affirmation directed by the Law of England; and that no Judge should be allowed to sit on the Bench, who should not first take the Oath or Affirmation of a Judge, as directed by the Law of England, and that all Persons who in England are obliged, and are willing, to take an Oath in any publick or judicial Proceeding, be admitted so to do by the proper Officers and Judges in Pensilvania and the said Counties, and in default thereof, or in case the said Judges refuse to administer the same, that their Proceedings be declared void and null; and that the Queen's Pleasure herein should be signified to Mr. Penn, and to the several Judges of her Majesty's Courts within those Territories; and, considering the Uncertainty of the Voyage to Pensilvania, they further proposed that the Queen's Approbation of the said Hamilton to be Deputy Governor of that Province should be extended to the 1st of May 1704. and no longer. Co. Off. No. 6.

Same Day.

The Queen's Order in Council stating the said Representation verbatim, approving of what was proposed thereby, and, accordingly ordering, that all Persons, in Judicial, or any other, Office, in Pensilvania and the said Lower Counties, before their entering on the same, should take the Oath directed by the Law

of England, or the Affirmation: and that no Judge should be allowed to sit on the Bench, who should not first take the Oath of a Judge, or the Affirmation in lieu thereof; and that all Persons should be admitted to take an Oath by the proper Officers and Judges in Pensilvania and the said lower Counties; in Default of which their Proceedings are hereby declared null and void; and the said William Penn, and the several Judges of her Majesty's Courts within the said Province and Territories, and all others whom it may concern, are to take notice hereof and govern themselves accordingly. And her Majesty being pleased to extend her Allowance and Approbation of Andrew Hamilton Esq; to be Deputy Governor, for the said William Penn, of the said Province of Pensilvania, and the said Territories adjacent, to the said 1st of May 1704, and no longer, Her Majesty is graciously pleased hereby to declare her Royal Approbation and Allowance of the said Andrew Hamilton to be Deputy Governor accordingly. Co. Off. No. 6. But Hamilton presently afterwards died.

Note.

Several of our Witnesses who have been examined in the Cause, say that they have not only seen many Dutch, but some Swedish Maps also, wherein both Capes, viz. Cape Cornelius, and Cape Hinlopen, were laid down exactly as they were in my Lord Baltimore's Map, by which the present Agreement was framed. And indeed, while the Swedes were in Possession, that Part now called Pensilvania and the lower Counties, was called New Sweedland:

Now we have a Swedish Book, printed in this Year 1702, which treats of New Sweden, now called Pensilvania, and was writ by Thomas Campanius Holm, wherein there is such a Map (at Fol. 27.) with both the Capes so to it. History of New Sweden in Quarto.

But it is submitted to your Consideration whether we can, or should produce it, on the two following Considerations, (and especially as we are strong enough without it.)

1. No Witness has spoke to this identical Map, as a particular Exhibit, tho' they say, in general, that they have seen Swedish Maps.

2. This Book was printed but in 1702, since the Grant of Pensilvania; and if we produce modern Maps, it may let the Defendant in to do so also.

Whereas, if we confine ourselves to such Maps as are proved in the Cause, and to such old Maps as were antecedent to the Year 1680, nothing can hurt us, but, if we let in all Sorts of Maps, we shall have modern Maps triumph upon us by the De-

fendant, such as have been made since the Names of the Capes have been altered, and we shall not be able to shew (as Maps commonly have no Dates) whether they are ancient Maps or modern ones.

Only thus, all the Maps which name Pensilvania must have been made since 1680.

However, if new Maps, tho' not proved in the Cause, should be let in against us, in that Case, this foreign Map is the strongest Evidence for us; especially as our Proofs say the Witnesses have seen Swedish Maps, which by their Account of them must be either this, or some such as this.

1703, *July 11.*

The Queen's Order in Council, made upon reading a Representation from the Lords of Trade, dated the 9th Instant, upon the Petition of Mr. Penn, that John Evans may have her Majesty's Approbation to be Deputy Governor of Pensilvania, and annex Territories, in the place of Andrew Hamilton deceased, and their Lordships having received a good Character of the said Evans, they have no Objection against her Majesty's Approbation of him accordingly; Her Majesty in Council approving the same, Declares her Royal Allowance and Approbation of the said John Evans to be Deputy Governor, for the said Mr. Penn, of the said Province of Pensilvania, and the annex Territories, as soon as Security shall be given for his observing the Acts of Trade and otherwise, as in the like Cases; and that Mr. Penn do renew the Declaration made by him, relating to her Majesty's Right to the three Lower Counties; and the Lords of Trade are to take care that the said Security be forthwith given, and the Declaration made, accordingly. Co. Off. No. 7.

July 22.

A Representation from the Lords of Trade to the Queen in Council, That they had required from Mr. Penn the Performance of the Conditions exprest in the last Order; and had accordingly received from him a Certificate of Security given in the Exchequer for 2000*l.* that the said Evans should duly observe the Acts of Trade, in the same Form as had been done for other Proprietary Governments; as likewise a Declaration and Promise, under Mr. Penn's Hand, that her Majesty's Approbation and Allowance of the said Evans to be Deputy Governor of the said Province and Territories should not be construed in any manner to diminish or set aside her Majesty's Claim of Right to the 3 lower Counties on Delaware River; whereupon, their Lordships are of Opinion that her Majesty do grant her Royal Approbation of the said Evans to be Deputy Governor of Pen-

silvania, without Limitation of Time, and of the 3 lower Counties during her Majesty's Pleasure only; and their Lordships lay before the Queen a Draught of Instructions, for Mr. Penn, relating to the Acts of Trade, to the like Effect as have been given to him, and all other Proprietors of Plantations, upon the like Occasion. Co. Off. No. 8.

July 30.

The Queen's Order in Council, stating that last Representation verbatim, and declaring her Royal Approbation, of the said Evans to be Deputy Governor of Pensilvania without Limitation of Time, and of the three lower Counties on Delaware River during her Majesty's Pleasure only. Co. Off. No. 8.

We see that, not only the Proprietor and People of Pensilvania, in their publick Acts, but also private Persons (and some of Maryland also) in their private Deeds and Transactions, call'd the Three Lower Counties, the Territories annexed to the Province of Pensilvania; we also have seen the publick and general Acts of Assembly, so annexing and uniting the said Province and Counties. We see the Crown, itself, in many of its Commissions, under the Great Seal, and other publick Acts, Orders of Council and Instruments, calls them the Territories annex to that Province, yet, the Defendant in his present Answer, Fol. 13. 14. 15. has the Hardiness to deny that they were ever so called by any but Mr. Penn and his Dependants only; whereas in his own Province he and his Ancestors past many old publick Acts of Assembly expressly calling them so, and tho' those old Maryland Acts are now repealed and gone, yet we shall find in 1704, in 1707, in 1715, and in 1724. Sundry Maryland Acts of Assembly, declaring them to be annexed to Pensilvania, and also considering, and taxing them, as a distinct Government from Maryland, some of which Maryland Acts (viz. those in 1704.) we now come to, and the residue of them will be stated afterwards, according to their order of time.

1704, *Sept. 30.*

A Maryland Act of Assembly, Repealing all former Acts of Assembly, made or enacted at any Time before the 26 April 1704, except two particular Acts therein specified, and except such as shall in this present Sessions be revived. Maryland Stat. Book, Fol. 44.

Same Day.

Another Maryland Act of Assembly for laying an Imposition on several Commodities exported out of this Province. It lays a Duty on several Sorts of Skins exported out of that Province

by Persons inhabiting or residing within the Province of Maryland, and laying, on the Exportation thereof by Non-Residents, double the Duties appointed to be paid by Persons inhabiting or residing within the Province. It also lays a Duty on Pork, Beef or Bacon exported out of that Province by Persons not being Inhabitants of that Province, and the Non-Residents exporting the same without Certificate of the Duty paid, to forfeit the same. And, for the better understanding what Persons shall be adjudged Non-Residents, it enacts that all Persons, trading to and from that Province, shall be adjudged Non-Residents, not having a seated Plantation of 50 Acres in which they shall have resided for a whole Year, and that within 12 Months before they claim any Benefit by this Act, or that have a House, of such a Dimension, in some Port or Town, as his Freehold, wherein he shall have resided for a whole Year as aforesaid. And that no such Person, trading to and from this Province, having Houses in any Town or Port within the same, whereby they may claim any Benefit or Freedom in this Act given to the Inhabitants thereof, shall enjoy any such Benefit or Privilege longer than they, in such Port or Town, shall actually inhabit and reside. Maryland Stat. Book, Fol. 29.

Now if the lower Counties were Part of Maryland, the Inhabitants there would be free by this Act, but we shall, in evidence, find that the Inhabitants, in the lower Counties, are considered as liable to pay these double Duties, (when they trade out of Maryland) as being Non-Residents in Maryland. And we have yet much clearer Instances than this.

1704, *Sept.* 30.

Another Maryland Act of Assembly confirming to the Governor of this Province the Duty of 3d. per Ton upon the Burthen of Ships and Vessels. Lays that Duty upon all Ships and Vessels trading and coming into that Province, except such Ships and Vessels as are bona fide built in, or belong to the People of this Province. Maryland Stat. Book, Fol. 44.

This Duty we shall find in Evidence, demanded of Ships belonging to the Lower Counties; ergo, they are not in the Province of Maryland.

1707, *Apr.* 15.

Another Maryland Act of Assembly for preventing the Exportation of Tobacco out of this Province by Land, before the Duties be paid or secured. Recites that it has been a Practice, by Merchants and other Inhabitants, as well of this Province, as of the Province of Pensilvania, and the Territories thereunto belonging, to export by Land, from the upper Parts of this Province, into Pensilvania and the Territories thereof, Tobacco,

without paying or securing the Duty, to the Prejudice of the Trade of this Province. It enacts that all Persons who have Tobaccos in the upper Parts of this Province, and who shall permit the same to be carried out of their Houses in order to be rolled or carried over Land, into the Province of Pensilvania, or Territories thereunto belonging, without a Certificate of the Duties paid, shall forfeit 10*l*. Sterling per Hogshead. Maryland Stat. Book, Fol. 49.

This answers in both Points. 1. It shews that there are Territories belonging to Pensilvania; and 2. That they are out of the Province of Maryland, and we shall find, in Evidence, this Act enforced against People of the lower Counties.

1703, *June 2.*

A Report from the Lords of Trade to the Queen in Council, made in Obedience to an Order of Reference of the 20th of May upon the Petition of William Penn Esq; praying that Captain Charles Gookin may have the Queen's Approbation to be Deputy Governor of Pensilvania in the place of John Evans Esq; whereby their Lordships represent to the Queen that having received a good Character of the said Gookin from Lieutenant General Erle, in whose Regiment he had served many Years, they had no Objection against her Majesty's Approbation of him accordingly, Security being first given for his observing the Acts of Trade and Navigation as in like Cases, and that Mr. Penn do renew the Declaration made by him relating to her Majesty's Right to the three Lower Counties. Co. Off. No. 9.

June 26.

The Queen's Order in Council, stating that Report verbatim, Her Majesty in her Privy Council approving the same, is pleased to declare her Royal Allowance and Approbation of the said Charles Gookin to be Deputy Governor of the said Province of Pensilvania, in the place of the said John Evans, as soon as Security shall be given for the said Gookin's observing the Acts of Trade and otherwise, as in the like Cases has been usual; and that Mr. Penn do renew the Declaration made by him relating to her Majesty's Right to the 3 Lower Counties; and the Lords of Trade are to take Care that the said Security be forthwith given, and the Declaration made accordingly. Co. Off. No. 9.

July 8.

A Representation from the Lords of Trade to the Queen in Council, that, in obedience to the last Order relating to the Queen's Royal Approbation of Gookin to be Deputy Governor of Pensilvania, and annexed Territorys, they have required from Mr. Penn, the Performance of the conditions therein exprest,

and having received from him a Certificate of Security given in the Exchequer for 2000*l.* that the said Gookin shall observe the Acts of Trade, in the same Form as has been done for other Proprietary-Governments; as likewise, a Declaration and Promise, under Mr. Penn's Hand, that the Queen's Approbation and Allowance of the said Gookin to be Deputy-Governor of the said Province and Territorys, shall not be construed in any manner to diminish or set aside her Majesty's Claim of Right to the 3 Lower Counties on Delaware River, they are of opinion that her Majesty do grant her Royal Approbation of the said Gookin to be Deputy-Governor of Pensilvania, without Limitation of Time, and of the 3 Lower Counties during your Majesty's Pleasure only; and we lay before your Majesty a Draught of Instructions, for Mr. Penn, relating to the Acts of Trade, to the like Effect as have been given to him and all other Proprietors of Plantations upon the like Occasion. Co. Off. No. 10.

July 18.

The Queen's Order in Council, upon reading that Representation, which is inserted verbatim therein, declaring her Royal Approbation of the said Gookin to be Deputy-Governor of Pensilvania, without Limitation of Time, and of the three lower Counties on Delaware River during her Majesty's Pleasure only. Co. Off. No. 10.

NOTE—This last Report and Order are also entred in Newcastle Records, No. 11. Fol. 96.

Sept. 3.

From Newcastle Records, the Inrollment of the Commission granted by Mr. Penn, as true and absolute Proprietary and Governor in Chief of the Province of Pensilvania and Counties of Newcastle, Kent and Sussex, lying on Delaware and the Eastern Sea, which shortly recites the Patent for Pensilvania, and the Duke of York's Possession and Beeds to Mr. Penn for the three lower Counties, and appoints Colonel Charles Gookin to be Deputy or Lieutenant-Governor of the said Province and Counties. Dated in the 20th Year of Mr. Penn's Government. Newcastle Records, No. 11. Fol. 95.

Oct. 6, 7.

Original Indentures of Lease and Release, whereby, in consideration of 3100*l.* paid by Henry Gouldney, Joshua Gee, Silvanus Grove and John Woods, 1000*l.* by Thomas Callowhill, 1500*l.* by Thomas Callowhill, Thomas Oade and Jeffery Pennell, and 1000*l.* by John Field and Thomas Cuppage (making in all 6600*l.*) The said William Penn the Patentee, and William Penn Esq; then his Son and Heir apparent, mortgaged unto the said Henry Gouldney, Joshua Gee, and others, the Province of Pen-

sylvania, and all Franchises, Powers, and Territories thereunto belonging, and all Rents, Issues and Profits, and the said Town of Newcastle, and the Tract of Land within the Compass or Circle of 12 Miles about the same; and all Islands in the River Delaware, and the said River and Soil thereof, with all Rents, Franchises and Jurisdictions thereto belonging; and all that Tract of Land upon Delaware River and Bay, beginning 12 Miles South of the Town of Newcastle, and extending South to the Whorekills, otherwise called Capin Lopen; and all Royalties, Franchises and Rents thereto belonging; to hold unto the said Henry Gouldney, Joshua Gee, and others the said Mortgagees in Fee, Provide for Redemption on Repayment of the 6600*l.* and Interest, at 6 per Cent. on the 8th of October 1710. Original Indentures of Mortgage proved in the Cause by Mr. Page.

NOTE—It will appear in Evidence how great Distress Mr. Penn was under at this time, wherefore, this was thought a proper Season for that very Lord Baltimore, with whom he had had the former Contest, and so very many Hearings in the Years 83, 84, and 85, to make a second Attempt against Mr. Penn.

Jan. 9.

The Lord Baltimore by his Petition to the Queen in Council suggested, that King Charles the Second, by a Letter dated the second of April 1681. taking notice of a Grant made to Mr. Penn of Pensilvania, did command the Petitioner and the said Penn to join in making a true Division and Separation of the Provinces of Maryland and Pensilvania, according to the Degree of Northern Latitude; which Letter was sent to the Petitioner, by Captain Markham, together with a Letter from the said William Penn, pressing the Petitioner to a speedy Compliance with his Majesty's Commands; To which the Petitioner was then, and had been ever, ready to submit, as by the said Letter thereto annext might appear. That the said Penn having, by his Agents, taken private Observations of the Degrees, and being informed that the 40th Degree Northernly would not give him a Port at the Head of the Bay Chesopeak, surreptitiously procured a second Letter, dated 19 August 1682, which having no relation to the Bounds of either Province, being obtained by Misrepresentation, was by the said Penn laid aside. And thereon the said Penn make an offer to the Petitioner, that if the Petitioner would allow him a convenient Port at the Head of the said Bay of Chesopeak at reasonable and gentle Rates, he then would, in obedience to the King's first Letter, join with the Petitioner to take an Observation at the Head of the said Bay, in order to fix the 40 Degrees of Northernly Latitude, being the Northern Bounds of Maryland, and South-

ern Bounds of Pensilvania; and that, on no other Terms, he would comply with, or obey, the King's Letter of 2 April 1681. That on 7 November 1685, the said Penn. falsely suggesting that the Petitioner by his Grant from the Queen's Grandfather, was to have no land but what was cultivated by Savages, (tho' the said Suggestion was directly contrary to the Words and Intent of the Petitioner's Grant) obtain'd an Order of Council, for dividing an Isthmus of Land, lying between the River and Bay of Delaware and the Eastern Sea, on the one Side, and Chesopeak Bay on the other; and thereby has endeavoured without your Petitioner's being ever heard to, or having notice of such Order, to deprive your Petitioner of his Inheritance granted to him by the Bounty of the Queen's Grandfather. Therefore, prays that the said order thus surreptitiously gotten, may be set aside, and that the Boundaries of the said two Provinces may be ascertained pursuant to the King's Letter of 2 April 1681. Co. Off. No 11.

King Charles the 2d's Letter to Lord Baltimore of 2 April 1681, (according to the Copy annex to the foregoing Petition) recited the Grant of Pensilvania, just then made to Mr. Penn, and recommended him, and his Deputies and Officers, to the friendly Aid and Assistance of the Lord Baltimore, willing and requiring Lord Baltimore, to do him all the Offices of good Neighbourhood which might tend to the mutual Benefit of the King's Subjects within the Provinces under their respective Proprieties; and moreover the King thought fit that, in order thereto, Lord Baltimore should appoint, with all convenient speed, some Persons, who might, in Conjunction with the said William Penn, make a true Division and Separation of the said Provinces of Maryland and Pensilvania, according to the Bounds and Degrees of Northern Latitude exprest in the said Letters Patent, by settling and fixing certain Land-marks, where they should appear to border upon each other, for the preventing and avoiding all Doubts and Controversies that might otherwise happen concerning the same. Co. Off. No 11.

The Letter, supposed to have been writ by Mr. Penn to Lord Baltimore, according to the Copy annex to that Petition, was dated 10 April 1682, and was a very civil, but general Letter, containing nothing in particular or material. Co. Off. No 11.

Jan. 9.

The Queen's Order in Council, made upon reading the Lord Baltimore's Petition, whereby it was ordered that the said Petition should be referred to the Lords of Trade, to examine the Allegations thereof, and report what they conceived her Majesty might fitly do therein. Co. Off. No 12.

Jan. 27.

Hereupon, in a very few days, Mr. Penn petitioned the Queen in Council, setting forth that, in 1683, Lord Baltimore complained to King Charles the 2d in Council that Mr. Penn had invaded that Lord's Boundary in Maryland; and, praying Redress therein, obtained a Summons for the now Petitioner, who was then in Pensilvania laying the Foundation of that now growing Colony. That the now Petitioner, in Obedience to such Summons, upon the first Notice of it, returned into England, to the vast Prejudice of his Interest in America; and in regard both the Lord Baltimore and himself were Grantees under the Crown, the now Petitioner joined with the said Lord in submitting their Boundaries to the Decision of the King as their Supreme Landlord. That the King referred the same to the Lords Committee for Trade and Plantations (then consisting of the whole Privy Council) who, after several Hearings of the Lord Baltimore and the Petitioner, and of their respective Council and Advocates, in the Years 84 and 85, and long Deliberation had of the Allegations and Proofs produced before them, reported their Opinions thereon, and how the said Boundaries should be settled; which Report was in November 1685. approved of and confirmed, by an Order of the King in Council. That the Petitioner, not doubting but that the Lord Baltimore would acquiesce under the Royal Determination, which himself had desired, the Petitioner and his Tenants have, ever since, improved the disputed Lands which were allotted to the Petitioner. But, to his great Surprise, after 23 Years quiet Possession under that Sentence, the Lord Baltimore has lately petitioned the Queen to set aside the King's Order in Council, which was intended to be final, which Petition the Queen has referred to the present Lords Commissioners for Trade and Plantations. The said boundaries having been solemnly settled, by a Judge of Lord Baltimore's own chusing, after the most deliberate and nice Enquiry into the Merits of his Complaint, and having been accordingly enjoyed so many Years—Mr. Penn prayed that the Queen would not countenance an Attempt so injurious to Property and the Rights of her subjects, but would order the Lord Baltimore's Petition to be dismissed. Co. Off. No 13.

Jan. 27.

By the Queen's Order in Council made upon reading Mr. Penn's Petition, and taking it into her Consideration, Ordered that the Lord Baltimore's said Petition should be dismissed; and that the Lords of Trade, to whom that Petition had been by Order of the 9th Instant referred, should not proceed to examine into the Allegations thereof, as by that Order had been directed. Co. Off. No 14.

And so Lord Baltimore's second Application was dismissed.

CHAP. IX. *From the second Determination in the Plaintiff's Favour, in January 1708, to the third Determination in their Favour, on 23 June 1709.*

1709, Apr. 15.

Mr. Penn petitioned Queen Anne in Council that, since both Provinces of Maryland and Pensilvania had long desired the Settlement of their respective Boundaries, and that this Petitioner had done his Endeavour to perform the same, and that, in pursuance of divers Orders from the Lords of Trade thereunto annexed, sent, both to the Lord Baltimore and the Petitioner; which meeting with a Disappointment on Lord Baltimore's side, his Agents refusing the Petitioner when upon the Spot, alledging they had no Instructions from their Lord for that purpose, The Petitioner prays the Queen to direct the respective Officers of both Proprietaries to pursue the said Orders and former Instructions thereupon granted after many deliberate Hearings in the Years 83, 84, and 85. Co. Off. No. 15.

Surely Mr. Penn thought the Order in 85. related to him, and was in his favour, (though said to remain to his Majesty) otherwise, he would not have tried to enforce it thus.

Apr. 16.

The Queen, by Order in Council, upon reading this Petition, referred the Consideration thereof to the Lords of Trade to state the Matter of Fact according to former Proceedings, and to report to her Majesty what fit to be done thereupon. Co. Off. No. 15.

But Lord Baltimore, then, was afraid of this Order of 1685, and tried every way to get rid of it.

May 19.

Lord Baltimore presented another Petition to the Queen in Council. Says he petitioned her Majesty 9. January last to be relieved against the Order of Council of 7. November 1685. obtained on false Suggestions by Mr. Penn Proprietor of Pensilvania, whereby an Isthmus of Land in Maryland was ordered to be divided, and one Moyety was adjudged to belong to the Crown and the other Moyety to the Petitioner. That the Order, so obtained, depriving the Petitioner of his Inheritance, without being ever heard by himself or Council, he did by his said former Petition, pray her Majesty to set it aside, and that the Boundaries might be settled pursuant to King Charles's Letter of 2. April 1681. That the Petitioner hoped her majesty would have heard that Matter, before herself in Council, that

thereby he might have made out his Right to the said Isthmus, and have proved the Artifices Mr. Penn had used to deprive him of his Property; but the Queen having referred his said former Petition to the Lords of Trade, he cheerfully submitted thereto, and prepared to verify his Petition and make out his Right before them. That Mr. Penn, knowing his Pretensions would not bear a Scrutiny before any Judicature, had lately petitioned the Queen, suggesting that the said Order of 7. November 1685 was obtained after several Hearings of the now Petitioner his Council and Advocates; whereas the Petitioner can fully prove that he had no notice of the said Order, and that the same was not insisted on or notified to the Petitioner, by the said William Penn till about two Months past; and by these and other Suggestions, which the Petitioner hopes to prove groundless and false, the said Penn has obtained an Order of Council of 27 January last, for dismissing the Petitioner's Order of Reference to the Lords of Trade, and his Petition also—whereby the Petitioner is wholly destitute of Means to assert his Property and prove his Right to the said Isthmus. He therefore prays to be heard by his Council against the said Order of 7 November 1685. and that the Differences between the said Penn and the Petitioner, touching the Boundaries between the said Provinces of Maryland and Pensilvania, might be adjusted according to King Charles the 2d's Letter of 2 August 1681. Co. Off. No. 16.

So very bold an Assertion, so strongly affirmed and repeated did obtain a Hearing.

1709, *May 19.*

By Order in Council made upon reading this last Petition, her Majesty ordered that the Matter thereof should be heard before herself in Council, upon 9th June next, whereof all Parties concerned were to take notice, and come prepared to be heard with their Council learned at that time, accordingly. Co. Off. No. 17.

June 9.

Her Majesty in Council ordered that the Hearing of the Matter in Difference between Lord Baltimore and Mr. Penn, appointed for this Day, be put off to the 23d Instant, whereof the Parties concerned are to take notice, and come prepared to be heard, by their Council learned at that time. Co. Off. No. 18.

June 23.

An Order. Present the Queen in Council and also (amongst divers other Lords) the Lord Chancellor, the Lord Chief Justice Holt, the Master of the Rolls, and the Lord Chief Justice Trevor (every Law Lord of the Council). It recites the Lord Baltimore's Petition, and that it had been appointed to be

heard in Council. And accordingly, both Parties this Day, attending, and being fully heard, with their Council learned, "And it appearing, by authentick Copies of Proceedings at "this Board, that, as well the Petitioner, as the said Mr. Penn, "had been divers times heard, before the making of the said "Order, her Majesty, with the Advice of her Privy Council, is "pleased to order, that the Lord Baltimore's Petition be dismissed "this Board; and that the above mentioned Order of Council of 13 November 1685, be ratified and confirmed in all its Parts, and be put in Execution without any further Delay; whereof the Parties concerned are to take notice, and yield Obedience accordingly. Co. Off. No. 19.

So ended Lord Baltimore's third Application.

CHAP. X. *From June 1709. to the Time of the Death of Mr. Penn the Patentee in 1718.*

1715, Apr. 26.

An Act of Assembly past in Maryland, prohibiting the Importation of Bread, Beer, Flower, Malt, Wheat or other Indian or English Grain or Meal, Horses, Mares, Colts or Fillies, from Pensilvania and the Territories thereto belonging. It enacts that no Person shall import from the Province of Pensilvania, or the Territories thereto belonging, or from any other Plantation, Province or Colony in the Continent of America, into any Port of this Province, any Quantity of those goods, on pain of forfeiture. Maryland Stat. Book, Fol. 73.

Apr. 26.

Another Maryland Act of Assembly, laying an Imposition on Negroes and on several sorts of Liquors imported, &c.—Enacts that the Importers of Rum, Spirits, Wine and Brandy from Pensilvania and the Territories thereto belonging, by Land, shall pay a duty of 9d. per Gallon, to be collected by the Naval Officer of Cecil County, and shall bring the said Liquors into this Province to the Place called Bohemia Landing, and to no other Place, until the Duties be paid, on pain of Forfeiture. And, before such Liquors shall be water born in Chesapeak Bay, the Importer shall enter the same upon oath, with the Naval Officer of Cecil County District; and if any Importer after he has brought the same to Bohemia Landing shall put the said Liquors on board any Vessel in Chesapeak Bay before the Duty paid, the same shall be forfeited. Proviso that any Person importing the Liquors aforesaid from Pensilvania in Sloops, by Sea, through the Capes of Chesapeak into this Province, shall only pay the Duty of 3d. per Gallon, as others do.

It also lays a Duty of 20s. Sterling per Poll on all Irish Servants imported into Maryland by Land or Water, and the like upon Negroes. But no Ship built in this Province, whereof all the Owners shall be actual Residents of this Province, nor any Ship, English or Plantation built, purchased and held by Owners which are all Residents within this Province, shall be liable to pay any the Duty before mentioned. Maryland Statute Book, Fol. 157.

We shall see in Evidence by and by, that all these Duties were constantly exacted from Persons of the lower Counties; Ergo, they are of a distinct Colony, and not imagined, in Maryland itself, to be a Part of that Province, but, as the very Acts call them, Territories belonging to Pensilvania.

1716, *Nov.* 12.

An Order of the Prince (Regent) in Council, made upon a Report from the Lords of Trade, upon a Representation from William Penn, praying the Approbation of William Keith Esq; nominated by the said Proprietor to be Lieutenant Governor of that Province, And the Lords of Trade having no Objections to his being Deputy Governor, His Royal Highness declares his Allowance and Approbation of the said William Keith to be Deputy Governor of the said Province of Pensilvania, provided that the said Keith qualify himself for that Trust, in such manner as the Law requires, and that Security be given for his observing the Acts of Trade, and obeying such Instructions as shall be sent him from his Majesty; and provided that Mr. Penn renew the Declaration made by him relating to his Majesty's Right to the three lower Counties; and the Lords of Trade are to take care that such Security be given and such Declaration be renewed accordingly. Co. Off. No. 20.

Dec. 16.

A Representation from the Lords of Trade that they have required from Mr. Penn the Performance of the Conditions required by that Order, that they have had a Certificate of Security being given in the Exchequer for 2000*l.* to observe the Acts of trade, in the same Form as for other Proprietary Governments; as likewise a Declaration and Promise under Mr. Penn's Hand that the Approbation and Allowance of the said Keith to be Deputy Governor of the said Province and Territories shall not be construed in any manner to diminish or set aside his Majesty's Claim of Right to the three lower Counties on Delaware River, And therefore are of opinion his Highness should grant his Approbation of the said Keith to be Deputy Governor of Pensilvania without Limitation of Time, and of the three lower Counties during his Majesty's pleasure only. And

they lay before his Royal Highness a Draught of Instructions for Mr. Penn relating to the Acts of Trade, to the like Effect as has been given to him and all other Proprietors of Plantations on the like Occasion. Co. Off. No. 21.

Dec. 17.

By Order in Council, made on reading the said Report, the Royal Approbation of the said Keith to be Deputy Governor of Pensilvania without Limitation of Time, and of the three lower Counties on Delaware River during his Majesty's Pleasure only, is given. Co. Off. No. 21.

Dec. 29.

A Petition, presented to the King at Hanover, by the late Earl of Sutherland; Suggesting that there were considerable arrears due to him since the Revolution, amounting to above 20,000*l.* and he had shewn great Zeal and Activity for the Protestant Succession, both before and since his Majesty's Accession, and given singular Proofs of his Fidelity and Affection to his Majesty, by his Services in Scotland during the Rebellion there; wherefore, prays the King to grant him a Charter of certain Lands lying upon Delaware Bay in America, commonly called the Three lower Counties, which he is ready to prove do belong to the Crown. Botra No. 23.

Dec. 29.

A Reference thereon, dated at Hanover, and sign'd by Mr. Secretary Stanhope, whereby his Majesty referred the same to the Lords of Trade to consider thereof, and report their Opinion what was fit for his Majesty to do therein, whereupon the King would declare his further Pleasure. Botra, No. 23.

Dec. & Feb.

This Memorial was also referred to the Attorney General and to the Sollicitor General by the Secretary of State. Sec. Off.

1717, Octob. 21.

Mr. Attorney and Sollicitor General (Northey and Thompson) made a Report to the King, stating the beforementioned Petition. And that they had given notice of the same to the Persons concerned for William Penn Esq; and several Mortgagees and Purchasors under him, and also to the Lord Baltimore, who, severally, claim Title to the said lower Counties, being called Newcastle, Kent and Sussex. That they had heard them, and their Agents, thereupon. And they certify his Majesty that Mr. Penn is intitled to the Plantation of Pensilvania: but that these Counties are not included in such Grants, and his Title to Pensilvania was not then contested.

And as to the King's Title, which the Earl of Sutherland had undertaken to make out, to the said three lower Counties, he insisted that the same were gained by Conquest, by the Subjects of the King's Predecessors, or granted to the King's Predecessors by the Possessors thereof; and that, thereby, the King's Predecessors became intitled to the same: for that a Subject of the Crown could not make foreign Acquisitions by Conquest, but for the Benefit of the Crown and that the Length of Possession will be no Bar to the Crown. That, for several Years past, Mr. Penn had had the Possession of the said lower Counties, under a Pretence of a Grant thereof, to him made in 1682, by the Duke of York who then had the Possession of New York and of the said three lower Counties, but had no Right to the said lower Counties, and therefore could not transfer any Right in the same to Mr. Penn; which appears, for that the Duke of York, in 1683, obtained a Warrant, from King Charles the Second, to pass a Patent, whereby the said three lower Counties should have been granted to the Duke of York, and a Copy of a Bill, to pass into a Grant, in April 1683, to the said Duke of York, of the said three lower Counties, was produced by the Earl of Sutherland; who alledged the same was never past into a Grant; and that, if the same had past into a Grant, it would not have made Mr. Penn's Title to the said three lower Counties good, the Title of Mr. Penn under the Duke of York being precedent to the Title of the Duke of York; but that the same remained in the Duke of York, and is, consequently, now in the King: And that the King's Title further appears, for that after, in May 1683, when the Lord Baltimore by Petition opposed the passing the said Bill under the Great Seal, Mr. Penn, then, appeared against the Lord Baltimore as Agent for the Crown, and not on behalf of himself; and Mr. Penn, under his Hand, has declared that the King's Approbation and Allowance of the Deputy Governor of Pensilvania and the three lower Counties, named by him, shall not be construed to diminish or set aside the Right Claimed by the Crown to the said three lower Counties. Besides the Earl of Sutherland insists that, in the Grant of the Duke of York in 1682, to Mr. Penn, of the said three lower Counties, there is a Reservation of an Account to be made, of one Moyety of the Profits of the Lands thereby granted, touching which no Account has yet been rendered by Mr. Penn, and that, therefore, if the said Grants of 1682, were effectual, Mr. Penn is yet accountable to the King for the Moyety of all the Profits of the Lands, so granted, from the Year 1682 according to the said Reservation; and if the Earl cannot, by the King's

Favour, be intituled to the said three lower Counties, he prays he may have the Benefit of the said Account.

That, in Answer hereto, on behalf of Mr. Penn's Mortgagees and other Purchasors under him, it is alledged, that King James, when Duke of York, was seised in Fee of the said three lower Counties; and as one Argument, to prove such Seizing, they produced the Letters Patent dated 29 June, 26 Car. 2di, whereby King Charles granted to the Duke of York such and such Lands (which the Report enumerates verbatim); within the Descriptions of which Grant, it has been agreed by both Parties, that the said three lower Counties are not contained; but, on the behalf of Mr. Penn, &c. it has been insisted that, by the General Words, "Together with all the Lands, Islands, Soyles, Rivers, Harbours, &c. and all other Royalties, Profits, Commodities and Hereditaments to the said several Islands, Lands and Premises belonging and appertaining, with their "and every of their Appurtenances," the said three lower Counties did pass, as belonging to the Premises expressly granted by the said Letters Patent: for that the three lower Counties were enjoyed by the Duke of York, together with New York, which was granted by the said Letters Patent to the said Duke of York, till he granted the same to the said Penn in 1682, by the Grants herein after mentioned: which seems difficult to us to be maintained, since the Abuttal in the said Letters Patent exclude the three lower Counties; but they presume the late Duke of York might have some other Grants thereof, [so we find he had, of the three lower Counties expresly] which Mr. Penn might give an account, but cannot, being under a Lunacy.

We further certify that, by indenture dated 24th August 1682, the Duke of York bargained, sold and enfeoffed, to the said William Penn and his Heirs, the Town of Newcastle and Tract of Land about the same, &c. under the yearly Rent of 5s. with a Covenant for further Assurance, and appointed Attornies to deliver Seizin; and by another Indenture, dated the said 24th August 1682, bargained, sold and enfeoffed, to the said William Penn and his Heirs, the other Tract South from Newcastle, and extending South to the Whorekills alias Capin Lopen, &c. In which last Indenture there is Mr. Penn's Covenant to account and pay one Moyety of the Profits, with Power of Distress in case of Non-payment, and the Duke appointed Attorneys to deliver Seizin of the last Premises also. That those Deeds were entred in the Office of Records for New York on 21 November 1682, within which said Grants the three lower Counties were contained; but the Covenant to account extends only to what is included in the last Grant.

The Report states, also, the Order, made by the Commander

in Chief and Council at New York on 21 November 1682, reciting the said two Indentures, and directing the several Magistrates to yield Obedience to the Powers thereby granted to Mr. Penn.

The Report, likewise, states an Affidavit, made by Thomas Grey, that he lived in Pensilvania from 1699 to 1707. and made out, and saw many Patents, or Grants and Warrants, whereby considerable Quantities of Lands, lying in the said three lower Counties, which as he deposes, are esteemed to belong to Pensilvania, were granted to divers Persons in Fee; some of which Grants or Warrants were signed by Mr. Penn, and the rest by his Agents or Commissioners, and all sealed with the Seal of the said Province; and that he has seen great Improvements, in Building and Planting, by Persons claiming under such Grants. That many of the said Inhabitants, who were reputed to have settled Lands in the lower Counties by Grants from the Swedes or Dutch, when the said Counties were in their hands respectively, or from the Governors of New York, under the late Duke of York, when the same was in his hands, did, upon making up their Accounts of Quit-Rents, due from them to the said William Penn for their Lands, except new Patents from the said William Penn or his Agents, and have since much encreased their Improvements thereof, both in Building and Planting. That he has seen Patents, or Instruments, for conveying Land, in the said Lower Counties, to divers of the ancient Inhabitants, as well from the Swedes or Dutch as the Governors of New York under the late Duke of York; as also Commissions under the Hands of some one of the said Governors of New York, constituting Magistrates and Officers in the said Lower Counties. That he believes the Patents of Lands in the said lower Counties, granted by the Governors of New York, were registered at New York; and that, if Search were made in the Secretary's Office there, the same would appear so to be. That he believes much the greatest Part of the Inhabitants of the Lower Counties who have Land there, hold the same by Title under Mr. Penn; and that several, who hold Land there by other Title, have delivered the same up, and accepted new Grants from Mr. Penn.

That it appears, by other Affidavits, that the Naval Store Company at Bristol have purchased of Mr. Penn 3120 Acres, in Kent County, and have already, in the Purchase, and by Improvements, expended 2000*l*. and are by Articles to lay out 3000*l*. more.

And as to the Objections that the Duke of York, in 1682. had no Title to the Lower Counties, and that therefore those Grants, then made to Mr. Penn, were void, which appears by

the Copy of the Bill dated 13 April 1683, in order to be past into a Grant to the Duke of York, and which is, after the Grant by the Duke to Mr. Penn, and which Bill recites a Surrender of certain Letters Patent dated 22d March then last (which Grant could not be, then, found) *On the behalf of Mr. Penn it was alledged, that it was probable the said Bill in 1683 might have past into a Grant, for they produced, from the Hanaper Office, where entries are made of Grants, that pass the Great Seal, an Entry of 16 April 1683, of a Grant to the Duke of York of the Town of Newcastle, such Entries not being made there but where Letters Patent do pass; which Patent might happen not to be inrolled (as it is not) by the Neglect of the Riding Clerk.

And as to the Objection that, if it were inrolled, the same is subsequent to the Grant to Mr. Penn, and that Mr. Penn appeared as Agent for the Crown against the Lord Baltimore, they insist that Mr. Penn, having a Grant then, so lately, from the Duke, might make use of the Duke's name, with his Leave, in Trust for Mr. Penn; which they rather apprehended, for that the Possession was always suffered to remain with Mr. Penn: and that, if the Grant was past, and was in Trust for Mr. Penn, it extinguishd the Covenant from Mr. Penn for accounting.

Besides, in the said last Grant to the Duke of York, it is recited that the Lands were formerly the Claim and Possession of the Dutch, and had been surrendered unto the Lieutenant Governor of the said Duke of York, and had, for several Years, been in his Possession, which might enable him to make the Grants in 1682, to the said Mr. Penn.

And, on behalf of the Purchasors, it has been insisted, that it would be very hard to put them to any Trouble, who have bought under the Title and Enjoyment of Mr. Penn, and have paid out great Sums of Money in improving their Purchases.

And as to the Title claimed by the Lord Baltimore, we are humbly of opinion that the same has already received a full and final Determination; for that, 31 May 1683, Richard Burk, Gent. Servant to Charles then Lord Baltimore, praying that the said Bill of 1683 might not pass the Great Seal, until his then Majesty should be satisfied of the Extent of the Letters Patent, formerly granted to Cecil Lord Baltimore, wherein the said Town and adjacent Country is alledged to be comprized; which said Petition being referred to the then Lords Commissioners for Trade and Plantations, on the 13th of November 1685, their Lordships made their Report, wherein they report, that having

*(but that Grant is now found)

examined the Matters, in Difference between the Lord Baltimore and William Penn Esq; on behalf of his then Majesty, concerning a Tract of Land called Delaware, they found the Land intended to be granted to Lord Baltimore, was only Lands uncultivated and inhabited by Savages, and that the Tract of Land then in Dispute, was inhabited and planted by Christians, at and before the Date of the Lord Baltimore's Patent, as it had ever since, to that Time, and continued as a distinct Colony from Maryland; so that their Lordships humbly offered their Opinion, that, for avoiding further Differences, the Tract of Land, lying between the River and the Eastern Sea on the one side, and Cheasapeak Bay on the other, be divided into equal Parts, by a Line from the Latitude of Cape Hinlopen to the 40th Degree of Northern Latitude, and that one half thereof, lying towards the Bay of Delaware and the Eastern Sea, be adjudged to belong to his Majesty, and the other half to Lord Baltimore; which Report his then Majesty was pleased to approve of, and to order the said Lands to be divided accordingly, and the Lord Baltimore and William Penn required to yield due Obedience thereunto; Which Report was also confirmed 23d June 1709, by her late Majesty Queen Anne in Council.

However, this Petition, on behalf of the Lord Baltimore, is a very great Argument that the Bill of 1683 to the late Duke of York, never passed the Great Seal, as on Mr. Penn's behalf is supposed, for that it being stopped, as must be presumed on that Petition or Grant, after that Matter settled, which was in 1685, in the Reign of the said Duke, when King of England, could not pass the Great Seal, in the Name of King Charles, to the Duke of York, then being King of England, but the Entry in the Hanaper Office might have been made when the Privy Seal was brought to the Great Seal, to be passed into a Grant.

On the whole matter, we humbly submit it to your Majesty's Consideration, whether it will not be reasoable that your Majesty's Title should be established by the Court of Chancery before any Grant should be made of the Premises; and if any Grant should be made, we most humbly submit it to your Majesty, whether the Claims of Purchasers or Grantees under Mr. Penn, who have improved that Part of the said three lower Counties, should not be established; But if Mr. Penn should have a Title to the three lower Counties by vertue of the two Grants made to him by the late King James in 1682, when Duke of York, we have not received any Answer why he should not account, according to his Covenant in the last of the said Deeds, for the Moiety of the Rents, Issues and Profits raised by vertue of that Grant.

All which is humbly submitted to your Majesty's Royal Wisdom.

Note.

The foregoing Report on Lord Sutherland's Petition in 1716. was so little in his favour that he took nothing by it. It is very long, as here stated, and contains many Matters whereof you have had an Account before. But there is a Use in stating it so fully, for you observe the Contents of it, and how fully and plainly the Objections to Mr. Penn's Title to the three lower Counties are therein stated; you also observe that Lord Baltimore was a Party to that Report (and the Opinion of the then Attorney and Solicitor General that he had no Title) Now, the Lord Baltimore, who was a Party thereto, is the very present Defendant, who, notwithstanding that, in one Part of his Answer to our Bill at Fol. 222, would have it be believed that the Plaintiffs imposed upon him in respect to their Title to the three lower Counties, which is impossible to have been true considering he was a Party to the foregoing Report, and so, contrary to Truth, and his own knowledge of the Truth; nay, indeed, he contradicts himself in his own long Answer, for it is but 14 Sheets before, viz: at Fol. 208, he swears he always knew and believed they had not a Title to the three Lower Counties, consequently they could not deceive him therein; Besides which, it will appear most manifestly, by and by, that it is of no manner of Consequence in the whole World, as to him, whether they really had, or had not, a Title to those Counties; since it is he that conveys those Counties to them, and not they to him.

1718.

Mr. Penn made a Will (about 1712) *sans* Date, and a Confirmation of it, dated 27 May 1712. By his Will taking notice, that his eldest Son was well provided for, by a settlement of his Mother's, and the Testator's Father's Estate: he devises the rest of his Estate in manner following: The Government of his Province of Pensilvania and Territories thereunto belonging he devised to the Earls of Oxford and Poulett, on Trust to dispose thereof to the Queen, or any other Person, to the best advantage they could, to be applied in such manner as he should therein after direct; and he gave to his wife Hannah Penn, and sundry others (to the Number of 12 Persons) all his Lands, Tenements and Hereditaments in Pensilvania and the Territories thereunto belonging, or elsewhere in America, upon Trust to sell sufficient to pay his debts, and after Payment to convey to each of his Son William's three Children, Springett, William, and Gulielma-Maria in Fee 10,000 Acres each. And (afterwards) 10,000 Acres more to the Testator's Daughter Letitia; And all the rest of his Lands, Tenements and Heredita-

ments in America to be conveyed by his said Trustees to and amongst his Children which he had by his then Wife, in such Proportions and for such Estates, as his said Wife should think fit, and made his said Wife sole Executrix. Original Will, to be produced from Doctors Commons, and to which we have examined one of the Witnesses, Thomas Pyle, in this present Cause.

July 30.

Mr. Penn, the Patentee, died; leaving a son William Penn Junior, and a Daughter Letitia by his first Wife; and leaving his second Wife Hannah Penn and four sons, the Plaintiffs John, Thomas and Richard Penn, and Dennis Penn (who is since deceased) and also a Daughter, Margaret Penn, by her.

CHAP. XI. *From the Death of William Penn Esq; the Proprietary, in 1718, to the Death of Mrs. Hannah Penn his Widow and Executrix, in 1726.*

1718, Nov. 14. 18.

Probate granted at Doctors Commons to Mrs. Hannah Penn the Widow and Executrix of the Will of her late Husband William Penn Esq; Original Probate under Seal. Original Deed Poll of Appointment, executed by Mrs. Hannah Penn, whereby she, in pursuance of the Powers vested in her by her late Husband's Will, directs and appoints all the rest and residue of the Testator's Lands, Tenements and Hereditaments in Pensilvania and the Territories thereunto belonging, or elsewhere in America, that should remain after the Provisions in the Will in manner following, viz. Three undivided sixth Parts of the Province of Pensilvania, and of all Lands and Profits, &c. therein, to be conveyed, by the Trustees, to and to the Use of, her eldest Son, the now Plaintiff John Penn in Fee, and the other three 6th Parts thereof, to and to the Use of her three other younger Children, Thomas and Richard Penn (now plaintiffs) and Dennis Penn (since dead) in Fee, as Joynt tenants. And as to the Lower Counties, and all, Lands therein, or elsewhere in America, she in like manner directed and appointed the Trustees to convey three sixth Parts thereof to the said John Penn in Fee, and the other three sixth Parts to the said Thomas, Richard and Dennis Penn, and their Heirs, as Joynt tenants for ever. Proviso that if the said John Penn should not pay to his Sister Margaret Penn 1500*l*. at her Marriage or age of 21, which should first happen, In such Case she appointed for her Daughter Margaret in Fee one third Part

of all that had been before appointed for the Use of her Son John. Deed of Appointment proved by Mr. Page.

1720.

William Penn junior, eldest Son and Heir of Proprietary Penn died, leaving two Sons, Springett and William, and a Daughter Gulielma Maria.

1721, *Octob.* 23.

The said Hannah Penn the Widow and her then Children, John, Thomas, Richard, Dennis and Margaret Penn, all Infants, brought their Bill in the Court of Exchequer, against the Earl of Oxford and Earl Poulett (to whom the Government had been devised, upon Trust to sell and apply the Produce in such manner as was intended to have been, but was not, afterwards directed) against the said Springett Penn the Grandson and Heir at Law of the Testator to establish the Will; against the said Henry Gouldney, Joshua Gee and others, the Survivors of the Mortgagees, to redeem, and also against Richard Hill, Isaac Norris and others the surviving Trustees in the Will, to whom the Lands had been devised in Trust, for to execute their Trust; and also against William Penn the Grandson, Gulielma Maria the Grand-daughter (and her Husband Aubrey Thomas) Letitia the Daughter (and her Husband) of the Testator, by his first Wife, who had Devises of 10,000 Acres each under the Testator's Will, and against his Majesty's Attorney General, to know whether the Crown would, or would not, go on with a Treaty that had been set on foot by the Earl of Oxford in 1711 and 1712, to purchase the Government from Mr. Penn for 12,000*l.*

1722, *Feb.* 6.

Dennis Penn the Son of the Testator died an Infant and Without Issue.

1722, 1723, 1724.

And many answers of the Defendants were put in thereto. Copy of Bill and answers proved by Mr. Weston, Exc. No. 1, 2, 3, 4, 5, 6, 7, 8.

1723, *Feb.* 17.

There was such an Agreement in Writing between the said Hannah Penn and the Lord Baltimore, not to grant out Lands upon the Borders which had been contested, for 18 Months; in which Time 'twas hoped the Boundaries might have been settled; and also such Proclamations afterwards publisht by the Lieutenant Governors in both Provinces, notifying that temporary Agreement, as the Plaintiffs have charged at Fol. 151. in their Bill, and which the Defendant has fully admitted at Fol.

192. of his Answer; but such Agreement, having been mislaid, is not proved in the Cause.

1724, *Octo.* 6.

A Maryland Act of Assembly for repealing Part of the last mentioned Act made in Maryland in 1715; enacting that such Part of that former Act as imposed 9d. a Gallon on Rum, Spirits, Wine and Brandy to be imported from Pensilvania and the Territories thereto belonging by Land, should be repealed; but this not to exempt Persons bringing the said Liquors from Pensilvania by Land from paying the other Duty of 3d. per Gallon, which is declared to be still due and payable. Maryland Statute Book, Fol. 263.

Mr. Gouldney, one of the principal Mortgagees died.

1725, *Octob.* 23.

The said Hannah Penn, John, Thomas, Richard and Margaret Penn, filed their Bill of Reviver in the Exchequer, against the Executor of the said Gouldney, Exc. No. 9.

Nov.

Petition from Lord Sutherland again, to have a Grant of the three lower Counties; and Reference of the same by the Duke of Newcastle to the Attorney and Sollicitor General. These are to be proved viva voce on the Hearing, there is nothing material in them, only to shew that Lord Sutherland had such a second Petition depending. and thereby to warrant Paris's Deposition, who speaks of several Hearings that there were before the Attorney and Sollicitor General on that Petition. Exhibit Sec. Off.

During that Suit in the Exchequer, though carried on very adversarily between Mrs. Penn and her Children on the one side, and the Heir at Law of the Proprietor on the other, they both agreed, thus far, to turn out the Deputy Governor Mr. Keith (then become Sir William Keith) and to appoint another, viz. Patrick Gordon.

Jan. 7.

From the Records in Newcastle County, The Commission which was this Day granted by Springett Penn Esq; Grandson and Heir at Law of William Penn Esq; by and with the Advice and Consent of Hannah Penn, widow and Executrix of the said William Penn, testified by her signing and sealing the same, appointing Patrick Gordon to be Lieutenant Governor of the said Province of Pensilvania and Counties of Newcastle, Kent and Sussex. Newcastle Records, No. 11. Fol. 97. 98.

Mar. 4.

A Report from the Committee of Council made upon the Re-

presentation (which had been referred to them the 12th of February last) of Springet Penn Grandson and Heir at Law of William Penn Esq; deceased, and Hannah Penn the Executrix of the said William Penn, humbly recommending Major Patrick Gordon to be Deputy or Lieutenant Governor of Pensilvania and of the Counties of Newcastle, Kent and Sussex on Delaware in America, in the room of Sir William Keith; and praying his Majesty's Approbation of him accordingly; and which Report was also made upon a Petition presented by Colonel Spotswood on behalf of Sir William Keith, and upon another Petition presented by the Creditors of Sir William Keith, praying that Sir William might not be removed; their Lordships reported that they had received a good Character of Major Gordon, and offered their Opinion that his Majesty should be pleased to declare his Allowance and Approbation of Major Gordon to be Deputy Governor of the Province of Pensilvania without Limitation of Time, and of the three Counties of Newcastle, Kent and Sussex, during his Majesty's pleasure only, provided the said Gordon qualified himself, and gave the Security; and provided that the said Springet and Hannah Penn made a Declaration, in such manner as had been formerly made by the said William Penn, relating to his Majesty's Right to the said three Counties. Co. Off. No. 22.

1725, *March* 11.

The King by Order in Council, made upon reading that Report, ordered just in the same Words as proposed; and directed the Lords of Trade to take care that the said Security was given, and Declaration made accordingly. Co. Off. No. 22.

1726, *Apr.* 18.

By another Order in Council reciting the last Order and that the Lords of Trade had this Day reported that they had received a Declaration and Promise under the Hand and Seal of the said Springett Penn, and the like under the Hand and Seal of the said Hannah Penn, that his Majesty's Approbation of the said Gordon to be Deputy Governor of the said Province and of the three Lower Counties should not be construed in any manner to diminish or set aside his Majesty's Claim of Right to the said lower Counties; and that they had also received a Certificate of Security given in the Exchequer, of 2000*l.* for Gordon's observing the Acts of Trade, His Majesty in Council declared his Royal Approbation of the said Gordon to be Deputy Governor of Pensilvania without Limitation of Time, and of the said three lower Counties of Newcastle, Kent and Sussex, during only his Royal Will and Pleasure. Co. Off. No. 23.

This last foregoing Order is also entred in Newcastle Records, No. 11. Fol. 99.

Dec. 13.

A Decree was made in the said Cause in the Exchequer, but that was, unless Cause, for the Heir at Law, and all the Relations of the Family, by Mr. Penn's first Wife, made Default at the Hearing. Exc. No. 10.

Dec. 20.

Mrs. Hannah Penn died.

CHAP. XII. *From the Death of Mrs. Hannah Penn in December 1726, down to the time of Beginning the Treaty with Lord Baltimore for the Agreement now in Question.*

1727, Apr. 20.

The said John Penn, Thomas Penn, Richard Penn, and Margaret Penn (after their Mother's Death) brought their Bill of Revivor of the Suit in the Exchequer. Exc. No. 11.

May 15.

Order to revive the said Cause. Exc. No. 12.

July 4.

The Cause in the Exchequer came on again, and all Parties appeared, and the Court declared that Mr. Penn's Will and Declaration or Confirmation dated 27 May 1712, were duly proved. But, as concerning all other the Matters and Things in the Cause, ordered it should stand to be heard the then next Michaelmas Term. Paper Copy of the Decree, Exc. No. 13. And Exemplification of that Decree under the Seal of the Court of Exchequer.

July 5.

A Family Deed of Indenture Sextipartite between the Plaintiffs John, Thomas and Richard Penn, and their Sister Margaret Penn, together with Thomas Freame (whom she was then going to marry with) and two Trustees Joseph Wyeth and Silvanus Beavan. Reciting Mr. Penn's Will, and Mrs. Hannah Penn's Appointment, whereby 1500*l.* was secured for the Daughter Margaret, (And reciting a subsequent Appointment of Mrs. Hannah Penn's, after the Death of her Son Dennis, which it's now thought she had no Power to make, having before executed her Power, neither, if the second Appointment were good, would it all vary the Plaintiffs Title,) And reciting the said Decree, and Mrs. Hannah Penn's Will, and sundry Difficulties arising thereon, and many other Matters; For settling all Difference it's agreed, *inter alia*, that the said John Penn his Heirs and Assigns shall hold and enjoy one Moyety of all the Testator's Estate in America (subject to a Provision herein

after made for the said Margaret) And that the said Thomas and Richard Penn their Heirs and Assigns shall hold and enjoy the other half Part thereof as Tenants in common, and not as Joynt tenants; Proviso that John Penn's Moyety shall be subject to pay to the said Margaret 500*l.* and also an annuity of 50*l.* during her Life, to be paid to her separate Hands, and also with Payment of 1000*l.* in three Months after her Death, to the said Wyeth and Beavan in Trust for her Children, in such manner as she shall appoint. And all the Parties thereto agree that the Trustees, named in their Fathers' Will, shall convey the Lands accordingly. Deed proved by Mr. Page.

1729, Jan. 13, 14.

Indentures of Lease and Release being a Reconveyance from Joshua Gee and John Woods (who were the two only surviving Mortgagees) of all the mortgaged Premises unto John Penn and Thomas Penn their Heirs and Assigns; as to one Moyety to the Use of the said John Penn in Fee; as to one Quarter Part to the Use and behoof of the said Thomas Penn in Fee; and as to the other Quarter Part to the Use of the said John Penn and Thomas Penn in Fee, but in Trust for the said Richard Penn his Heirs and Assigns. Note, Mr. Richard Penn being then married was the Reason why the legal Estate was not vested in him, only the Trust thereof. Original Deeds of Conveyance proved by Mr. Page.

1730, Dec. 30.

Springett Penn, who was the Grandson and Heir of Proprietary Penn, died unmarried, and his younger Brother, William Penn, the Grandson, became Heir at Law of Proprietary Penn.

CHAP. XIII. *From the Beginning of the Treaty, to the Time of executing the Articles of Agreement in Question, and the Commissions for running the Lines pursuant to the same.*

1731, June 3.

Was the Day (as will appear in Evidence) when the Parties to this Cause had the first Meeting, in order to the Agreement.

June 3.

The written Map then produced and markt and made use of by the Plaintiffs on their Parts, in order to the Agreement, which has some other Words writ upon it, but all the Lines and Outmarks are exactly agreeable to my Lord Baltimore's Map which was afterwards graved and stampd, or printed, on the Original Articles of Agreement. This Map is proved by Paris, and is the Exhibit Par. No 1. in a marbled Cover.

The Treaty not proceeding at that time, but breaking off then, because at first, the Plaintiffs refused to agree to the Defendant's Proposals, the Lord Baltimore petitioned the King as follows:

July 1.

The Defendant the Lord Baltimore petition'd the King, and set forth the Grant of Maryland, made to his Ancestor in 1632, and the Description of the Tracts of Land, as they are therein exprest; and, That the late William Penn, by Grant under the Great Seal, in the Year 1680, became Proprietor of the Province of Pensilvania, and his Descendants (as the Petitioner believed) still were Proprietors of the same. That there had been diverse Disputes, between the Petitioner's Ancestors, and the said William Penn, about the Northern Boundaries of the said Province of Maryland, and frequent Application having been made to His Majestys Royal Ancestors in Council, in order to settle and ascertain the same, not only in the Year 1685, 1708, but so lately as in the Year 1720, by the Widow of the said William Penn, and divers Letters and Orders had been sent by His Majesty's Royal Ancestors for that purpose; but they had hitherto had no effect. That, by reason of the said Disputes, very great Numbers of the Petitioner's Tenants refused to pay any Rents, or to submit themselves to the Petitioner's Government, or really to any, which occasioned frequent Disputes, notwithstanding the Petitioner's great Care to prevent the same. He therefore prayed the King to order the Proprietors of the Province of Pensilvania forthwith to join with him in settling and ascertaining the said Boundaries; and, in case they refused to comply therewith, or in case the same should not be settled and ascertained within the Space of twelve Months from that time, that then, and in that case, the King would hear the Matter in dispute, and give such Order, and make such Determination, touching the the same, as to His Majesty should seem meet. Co. Off. No. 24.

If that Petition had any Meaning at all, surely it must be to carry into execution the Order of 1685, which is mentioned in that Petition; and which Order of 1685, expresly adjudged the Right to the three lower Counties, against him and had contained Directions for settling the Bounds of those lower Counties; but which Bounds had not, indeed then, nor yet neither, been ever run out.

July 1.

It was ordered that the said Petition should be referred to a Committee of the Lords of His Majesty's most Honourable Privy Council, to consider the same, and report their Opinion thereupon to His Majesty. Co. Off. No. 25.

July 22.

The written Heads for an Agreement, then produced by Lord Baltimore, and whereof a Copy, full of Abbreviations, was soon afterwards delivered by the Defendant's Sollicitor to the Plaintiff's Sollicitor, is in the following Words, viz.

1. There shall be a Circ. of 12 M. dist. drawn from Newcastle.

2. The Proprs. of Pensil. shall be entituled to 15 Miles Soth of Phila. by a West Line drawn from the Point of the Soth and North to the extent of their West Limits comprised in the Charter of Pensa.

3. There shall be a Line South drawn from the East and West Line aforesaid, which shall intercutt the Periphery of the Circ. of 12 Miles from Newcastle, untill it intercutt the Parallel of an East and West Line drawn, the Promontory or Cape called Cape Hinlopen at rect Angles.

4. The Lord Baltimore, to quit all Pretensions to the three lower Counties (known to be at present comprised within the Limits aforesaid, that is to say, within the 12 Miles Circle of Newcastle and the North and South Line drawn as aforesaid on the West, and the Bay of Delaware on the East.

5. The Proprtrs. of Pensa. to quit all Pretensions to any Land to the Southward of the Line of 15 Miles from Phil., and to the West of the North and South Line heretofore described, and for the Considerations aforesaid convey to the Lord Baltimore, all Right and Title they may have thereunto belonging.

6. For the quieting the present Possessors of the Lands in dispute, and the better informing the respective Proprietors of the Provinces aforesaid, it is agreed by the Parties contracting that it shall and may be lawful for each Proprietor to have Copys at their respective Costs and Charges of the Grants, Patents, and Leases, &c. by which any of the present Claimants held their Land.

And moreover it is mutually agreed that fresh Patents, Leases, and Grants, shall be made out to all the Possessors of Land, Houses, &c. within the present disputed, and by this determined, Boundary without any Fines or Arrearages of Rent whatsoever, provided they become Tenants to the respective Provinces, subject to the Rents and Reserves common to the Landholders of the respective Provinces, subject nevertheless to usual Fees to the proper Officers of the said Provinces for the taking out of any new Patents for the Lands or Tenements they at present are possessed of.

This is proved by Paris, and is a very material Exhibit markt Par. No. 2.

We have, most particularly, charged this Paper to be of the Defendant's own Hand-writing, at Fo. 179. of our Bill, and

at Fo. 1415. we have demanded that he may produce it. He in his Answer, Fo. 257. admits there was such a Paper, but says it's mislay'd, but if he finds it, he will produce it.

If he does not, the Reason is most obvious, for this puts an end to his Commissioners Doubt (which yet he says he approves of) whether the Circle should be 2 Miles or 12 Miles, from Newcastle? For here, in two several Places, in his own Notes for drawing up the Agreement in Form, he says twice over, that the Circle shall be 12 Miles distant from Newcastle, and again 12 Miles from Newcastle.

NOTE—The Defendant has proved, by his own Solicitor Mr. Sharpe, that the foregoing Notes are lately found, and he sets forth an exact Copy of the same verbatim, in his Deposition. For which we are bound to thank him. And it's intended to move, that the Original may be produced at the Hearing by the Defendant, according to his Offer, now that it is found.

Aug. 16.

The Draught of the Articles of Agreement this Day delivered over to Mr. Sharpe, with his own Directions thereon, to Counsellor Wynne, and his own Marks and Notes thereon, that the Miles were to be mentioned English Statute Miles, &c. This Paper is proved by Serjeant Wynne, and by Paris, and is Exhibit, Par. No. 3.

Aug. 19.

Mr. Sharpe's Letter to Mr. Paris, that he had perused the Draught of the Agreement between Lord Baltimore and Messieurs Penns, and thought the same perfectly right, and had sent it that Night to Lord Baltimore for his Perusal, with a Desire to return it to him as soon as he had done with it, and the Moment it came back to Mr. Sharpe he would let Mr. Paris know it. This Exhibit is proved by Mr. Paris, and is Par. No. 4.

This serves to prove the Length of Time taken to consider the Draught, from August 1731, to 10 May 1732.

Sept. 22, 23.

Indentures of Lease and Release, whereby William Penn, Grandson and Heir at Law of Proprietary William Penn, in Consideration of 5500*l.* Releases and Quits Claim to the said Province and Counties, unto the said John and Thomas Penn in Fee; As to one Moiety to the use of John Penn in Fee; as to one quarter Part to the Use of Thomas Penn in Fee; and as to the other quarter Part, to the Use of John and Thomas Penn in Fee, but in Trust for Richard Penn, his Heirs and Assigns. Deeds proved by Paris.

Sept. 29.

Bargain and Sale enrolled, by way of Mortgage, from John, Thomas and Richard Penn, of the Province of Pensilvania only, excepting thereout the Government and Powers of Government, to William Penn in Fee, for securing 5000*l.* and Interest, proviso for Redemption. Deed proved by Paris.

Feb. 12.

By an Indorsement made on the Back of the Family Deed of 5 July 1727, Margaret (Penn) and her Husband Thomas Freame, release to the said John Penn the 500*l.* which had been there-within secured to her out of Mr. Penn's Moiety. Endorsement proved by Mr. Page.

1732, *March 29.*

The new Clause, that Day delivered by Lord Baltimore, above 7 Months after the Draught of the Agreement had been delivered over, viz. "There must be a Clause to prohibit any of the "People of the respective Provinces to carry on any Commerce "into the Bays of Chesopeak and Delaware, by the means of "any River or Rivers, leading from one of the Provinces afore-said to the other, without the Leave of the Proprietor of the "Province to whom the said Bay doth belong." Proved by Paris, and is the Exhibit, Par. No. 6.

April.

That Copy of Mr. Senex's written Opinion of the Articles which he delivered to the Plaintiffs, viz.

The Division, as described in the Articles. That there shall be drawn, so much of a Circle as is necessary, round Newcastle as a Center, at the Distance of 12 English Statute Miles. That there shall be a true East and West Line drawn, 'twixt Cape Hinlopen and the Chesopeak Bay: And that, from the middle of that Line, there shall be drawn a Right Line, Northwards, so as to become a Tangent Line, on the Western Side, to the above Circle, described at 12 Miles Distance from Newcastle. That, at the Distance of 15 English Miles from the most Southern Part of Philadelphia, there shall be drawn Westwards a Parallel, or due East and West Line, whose Distance, Westwards, is to be determined afterwards. That, from the Point of Contact of the afore described Tangent Line with the Circle, there shall be drawn a Meridian, or due North and South Line, so far as till it touches the said Parallel. That those Lines, so drawn, shall be the Boundaries 'twixt Pensilvania and Maryland. All to the Northward and Eastwards Pensilvania. All to the Southward and Westward Maryland. This Division of the Countries in dispute, betwixt the Lord Baltimore, &c. as described in the Articles of Agreement, &c. Seems to be much

more convenient and practicable, than any Division that can be made, by affixing the Longitude and Latitude of such Bounds—Because, the Longitudes and Latitudes of Places are with great Difficulty made sufficiently exact, to determine the true Place of such Boundaries, within less than a Mile or two Miles: Whereas, this Method is easily practicable, and determines it to what Exactness is required. Moreover, in case any Dispute at any time arises, it may soon be adjusted, by any skilful Surveyor, to the Satisfaction of each Party. John Senex.

This Exhibit is spoke to by Paris, and is proved to be Mr. Senex's Hand (who is dead) by Mary Senex his Widow, and by Thomas Hutchinson and Thomas Smith, who were his Servants. And is the Exhibit, Par. No. 5.

This Man, of my Lord Baltimore's own chusing, read and explained the Draught of the Articles, that the Circle was to be at 12 Miles Distance from Newcastle, and also shews that he understood Newcastle itself, as a Center.

1732, *April*.

The Copy of Lord Baltimore's Map, as engraved by Mr. Senex (who he chose to do it) or his Servants. Printed Map proved by Hutchinson and Smith, being the Exhibit Sen. No. 1.

May 10.

Copy at full length of the Articles of Agreement executed between the Parties, viz.

ARTICLES of Agreement indented, had, made, and concluded upon, this tenth Day of May, in the Fifth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. Annoque Domini 1732, between the Right Honourable Charles Lord-Baron of Baltimore in the Kingdom of Ireland, true and absolute Lord and Proprietary of the Provinces of Maryland and Avalon, &c. of the one Part, and John Penn, Thomas Penn, and Richard Penn Esqrs. Sons and Devises under the Will of William Penn Esq; the Elder, their late Father, true and absolute Proprietaries of the Province of Pensilvania, &c. of the other Part, in Manner and Form following; that is to say,

Whereas, his late Majesty King Charles the First, by his Royal Charter or Letters Patent under the Great Seal of England, bearing Date at Westminster the twentieth Day of June, in the eighth Year of his Reign, did give, grant, and confirm unto Cecilius, then Baron of Baltimore, (the Great Grandfather of the said Charles Lord Baltimore) and to his Heirs and Assigns, all that Part of a Peninsula lying in the Parts of America,

between the Ocean on the East, and the Bay of Chesapeake on the West, and divided from the other Part thereof by a Right Line from the Promontory or Cape of Land called Watkin's Point, (scituate in the aforesaid Bay near the River of Wigheo) on the West, unto the main Ocean on the East; and, between that Bound on the South, unto that Part of Delaware Bay on the North, which lieth under the fortieth Degree of Northerly Latitude from the Equinoctial, where New England ends; And All that Traet of Land, between the Bounds aforesaid; that is to say, passing from the aforesaid Bay called Delaware Bay, in a Right Line, by the Degree aforesaid, unto the true Meridian of the first Fountain of the River Pattowmeck, and from thence trending toward the South unto the farther Bank of the aforesaid River, and, following the West and South Side thereof, unto a certain Place called Cinquack, scituate near the Mouth of the said River, where it falls into the Bay of Chesapeake, and from thence, by a straight Line, unto the aforesaid Promontory and Place called Watkin's Point (except. as therein is exepected:) And his said late Majesty did thereby also grant and confirm unto the said then Lord Baltimore, his Heirs and Assigns, all Islands and Islets within the Limits aforesaid, and all and singular the Islands and Islets, which were or should be in the Ocean, within ten Leagues from the Eastern Shore of the said Country towards the East, with all and singular Ports, Harbours, Bays, Rivers and Inlets belonging unto the Country or Islands aforesaid: And all the Soil, Lands, Fields, Woods, Mountains, Fenns, Lakes, Rivers, Bays and Inlets scituate or being within the Bounds and Limits aforesaid: And moreover, all Veins, Mines and Quarries, as well discovered as not discovered, of Gold, Silver, Gemms and precious Stones, and all other Mines whatsoever of Stones, Metals, or of any other Thing or Matter whatsoever, found, or to be found, within the Country, Isles, and Limits aforesaid, reserving as therein is reserved; together with divers ample Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, Royal Rights and Franchises, of what kind soever, more at large set forth in the said Letters Patent. And the said then Lord Baltimore, his Heirs and Assigns, his said late Majesty did thereby for himself, his Heirs and Successors, make, create, and constitute the true and absolute Lords and Proprietaries of the Country aforesaid, and of all other the Premises (except as before excepted) to have, hold, possess and enjoy the said Country, Isles, Islets, and other the Premises, unto the said then Lord Baltimore, his Heirs and Assigns, to the sole and proper Use and Behoof of him the said then Lord Baltimore, his Heirs and Assigns for ever; as by the said Char-

ter, relation being thereunto had, may more fully and at large appear.

And whereas his late Majesty King Charles the Second, by his Royal Charter or Letters Patent under the Great Seal of England, bearing Date at Westminster the fourth Day of March, in the thirty-third Year of his Reign, for the Consideration therein mentioned, did give and grant unto the said William Penn the Elder, his Heirs and Assigns, ALL that Tract or Part of Land in America, with all the Islands therein contained, as the same was bounded, on the East, by Delaware River, from twelve Miles distance Northwards of New-Castle Town, unto the forty-third Degree of northern Latitude, if the said River did extend so far Northward; but, if the said River should not extend so far Northward, then, by the said River so far as it did extend; and, from the Head of the said River, the Eastern Bounds were to be determined by a Meridian Line, to be drawn from the Head of the said River unto the said forty-third Degree: The said Lands to extend Westward five Degrees in Longitude, to be computed from the said Eastern Bounds: And the said Land to be bounded, on the North, by the beginning of the forty-third Degree of northern Latitude, and, on the South, by a Circle drawn at twelve Miles distance from New-Castle, Northwards and Westwards, unto the beginning of the fortieth Degree of northern Latitude, and then, by a strait Line, Westward, to the Limit of Longitude above-mentioned. And his said late Majesty King Charles the Second did thereby also give and grant unto the said William Penn the Elder, his Heirs and Assigns, the free and undisturbed Use and Continuance in, and Passage into and out of all and singular Ports, Harbours, Bays, Waters, Rivers, Isles, and Inlets, belonging unto or leading to or from the Country or Islands aforesaid; and all the Soil, Lands, Fields, Woods, Underwoods, Mountains, Hills, Fens, Isles, Lakes, Rivers, Waters, Rivulets, Bays and Inlets, situate or being within, or belonging unto the Limits and Bounds aforesaid; and also all Veins, Mines, and Quarries, as well discovered as not discovered, of Gold, Silver, Gems and precious Stones, and all other whatsoever, of Stones, Metals, or any other Thing or Matter whatsoever, found or to be found within the Country, Isles, and Limits aforesaid; and him the said William Penn the Elder, his Heirs and Assigns, his said late Majesty King Charles the Second did, by the said Royal Charter, for himself, his Heirs and Successors, make, create, and constitute, the true and absolute Proprietaries of the Country aforesaid, and of all other the Premises, TO HAVE, hold, possess, and enjoy the said Tract of Land, Country, Isles, Inlets, and other the Premises, unto the said William Penn the

Elder, his Heirs and Assigns, to the only proper Use and Be-
hoof of the said William Penn the Elder, his Heirs and Assigns
for ever; as by the said last recited Charter or Letters Patent
(amongst divers other Matters and Things therein contained)
relation being thereunto had, may more fully and at large ap-
pear.

And whereas by Indenture of Bargain and Sale enrolled,
bearing Date on or about the four and twentieth Day of August,
in the Year of our Lord One Thousand Six Hundred Eighty
and Two, and made or mentioned to be made, between his
Royal Highness James, then Duke of York, (afterwards James
the Second, King of England) of the one Part, and the said
William Penn the Elder of the other Part, his said Royal High-
ness (for the Considerations in the said Indenture mentioned)
did bargain, sell, enfeoff, and confirm unto the said William
Penn the Elder, his Heirs and Assigns for ever, ALL that the
Town of New-Castle, otherwise called Delaware, and all that
Tract of Land lying within the Compass or Circle of twelve
Miles about the same, seituate, lying, and being upon the River
Delaware in America, and all Islands in the said River Dela-
ware, and the said River and Soil thereof, lying North of the
Southernmost Part of the said Circle of twelve Miles about the
said Town, together with all Rents, Services, Royalties, Fran-
chises, Duties, Jurisdictions, Liberties and Privileges thereunto
belonging; and all the Estate, Right, Title, Interest, Powers,
Property, Claim and Demand whatsoever, of his said Royal
Highness, in or to the same, To hold to the said William Penn
the Elder, his Heirs and Assigns, to the only Use of the said
William Penn the Elder, his Heirs and Assigns for ever.

And whereas by another Indenture of Bargain and Sale, or
Feoffment, bearing Date on or about the said four and twentieth
Day of August in the said Year One Thousand Six Hundred
Eighty and Two, and made, or mentioned to be made between
his said Royal Highness of the one Part, and the said William
Penn the Elder of the other Part, his said Royal Highness for
the Considerations in the said last Indenture mentioned, did
bargain, sell, enfeoff, and confirm unto the said William Penn
the Elder, his Heirs and Assigns, all that Tract of Land upon
Delaware River and Bay, beginning twelve Miles South from
the Town of New-Castle, otherwise called Delaware, and ex-
tending South to the Whore Kilns, otherwise called Capin
Lopen, (which said last mentioned Tract of Land hath been
divided into two Counties, and called by the Names of Kent
and Sussex; and these two Tracts, together with the Town of
New-Castle, are, and have been, commonly called by the Name
of the three lower Counties of New-Castle, Kent and Sussex)

together with the Soil, Fields, Woods, Underwoods, Mountains, Hills, Penns, Isles, Lakes, Rivers, Rivulets, Bays and Inlets, situate in or belonging unto the Limits and Bounds aforesaid; together with all sorts of Minerals, and all the Estate, Interest, Royalties, Franchises, Powers, Privileges and Immunities whatsoever, of his said Royal Highness thereunto, To hold unto the said William Penn the Elder, his Heirs and Assigns, to the only Use and Behoof of the said William Penn. his Heirs and Assigns for ever; as by the said two several Indentures of Bargain and Sale or Feoffment, relation being unto them respectively had, may more fully appear.

And whereas, soon after the granting the said Charter and Deeds of Bargain and Sale or Feoffment unto the said William Penn the Elder, several Disputes and Differences arose between the then Lord Baltimore, (Grandfather of the said Charles Lord Baltimore) and the said William Penn the Elder, touching the respective Bounds and Limits of the said Provinces of Maryland and Pensilvania, and between the said Province of Maryland and the said three lower Counties of New-Castle, Kent and Sussex, in regard that the Observations made by Mathematicians and other skilful Persons from time to time, in order to the fixing the Place of the fortieth Degree of northerly Latitude (mentioned and referred to by both the said Charters of Maryland and Pensilvania) greatly varied and differed from each other; and also, in regard that the said Traets of Land, since called the three lower Counties of New-Castle, Kent and Sussex, which were granted to the said William Penn the Elder, by the said Deeds of Bargain and Sale or Feoffment (or at least some Parts thereof) were comprized within the Bounds and Limits which had been mentioned in the said Charter of Maryland. And whereas, notwithstanding several Treaties and Endeavours for settling the said Disputes and Differences, divers Difficulties have arisen, and many Persons have seated themselves upon great Parcels of the Lands in dispute, without Authority from either of the Proprietors, and without paying the usual Fines or Quit-rents, or conforming themselves to the Government and Establishment settled in any of the said Provinces or Counties: But, for the putting a final and friendly End and Accommodation to the said Disputes and Differences, the Parties hereunto have come to the following Agreement touching the same.

Now therefore these present Articles witness, That it is hereby mutually and reciprocally covenanted, promised, declared and agreed by each and every one of the said Parties to these Presents, for himself, and his Heirs, Executors and Administrators, to and with, all and every other of the same Parties to these

Presents, and their several and respective Heirs, executors and Administrators, in Manner and Form following; that is to say,

I. That the Draught or Plan printed in the Margin upon this Skin of Parchment, which contains a Map of the Peninsula herein before mentioned, and also of the Tracts of Ground wherein the said Province of Maryland, (or Part thereof) the said Three Lower Counties, Part of the said Province of Pennsylvania, and Part of Virginia do lie, is a true Copy of those which had been sent over from America, to the present Parties hereto, by their respective Agents in those Parts, for the Assistance and Guidance of the said Parties, in the settling the said Disputes, and by which this present Agreement is to be explained and understood.

II. That there shall be the said Circle, mentioned in the said Charter for Pennsylvania, and Deed of Bargain and Sale or Feoffment of New-Castle, (or so much thereof as is requisite) drawn and marked out at the twelve Miles distance from the Town of New-Castle; which twelve Miles shall be twelve English Statute Miles.

III. That a due East and West Line shall be drawn across the said Peninsula, (or across so much of it as shall be requisite) such East and West Line to begin, on the East Part, at the Place in the said Draught or Map called Cape Hinlopen, which lies South of Cape Cornelius, upon the eastern Side of the said Peninsula, towards the main Ocean, and, at the Point of the said Cape; and to run toward the western Side of the said Peninsula, which lies upon the Chesapeake Bay; but to stop, in the exact middle of that Part of the same Peninsula, when so running a due East and West Course.

IV. That, from the Western Point or End of the said East and West Line (which Western Point or End shall be just half way across the said Peninsula) a strait Line shall run, Northward, up the said Peninsula (and above the said Peninsula if it require it) till it shall so touch the Western Part of the Periphery of the said Circle, as to make a Tangent thereto: The said strait Line, as at present apprehended will run pretty near South and North, but (however it may bear on the Compass) such strait Line shall be run Northward up the said Peninsula (and above the said Peninsula if it require it) and shall begin at and from the Western Point or End of the aforesaid East and West Line, and shall run until it touches, and makes a Tangent to, the Western Part of the said Periphery of the said Circle, and, there, the said strait Line shall end.

V. That, at the Northern Point or End of the said strait Line, a Line shall begin, and shall, from thence, run due North above the said Peninsula, but so far only until it comes into

the same Latitude, as fifteen English Statute Miles due South of the most southern Part of the City of Philadelphia.

VI. That a due East and West Line shall be run in manner following; it shall begin at the northern Point or End of the said due South and North Line, and shall, from thence, run due West cross Sasquehannah River, to the utmost Western Extent of the said Province of Pensilvania, or so far in Part thereof as shall be at present requisite, in regard that, as the same is to be a due East and West Line, the beginning Part thereof may be sufficient to continue the same by, when further Occasion shall require, and when the Lands Westward in the said Provinces of Maryland and Pensilvania shall be better settled, and that it would occasion a very great Expence, and likewise be at present needless, to run the same to the utmost Extent Westward of the said Province of Pensilvania; however, the same shall (at present) be run cross Sasquehannah River, and about five and twenty English Statute Miles further on the Western Side of the said River.

VII. That the Part of a Circle, at present drawn with Red Ink upon the said Draught or Plan, and the red Lines also drawn thereupon, are now drawn to serve as an Explanation to this present Agreement, but not with exact Certainty, in regard the said Draughts or Plans, so sent over to the Parties aforesaid, have neither Scale or Compass to them.

VIII. That the first above-mentioned due East and West Line to run from Cape Hinlopen to the Middle of the Peninsula, and the said strait Line to run from the Westward Point thereof Northwards up the said Peninsula (and above the said Peninsula, if it require it) till it touches or makes a Tangent to the Western Part of the Periphery of the said twelve Miles Circle; and the said due South and North Line to run from such Tangent till it meet with the Upper or more Northern East and West Line: And the said upper East and West Line to begin from the Northern Point or End of the said South and North Line, and to run due Westward at present cross Sasquehannah River, and Five and Twenty English Statute Miles at least on the Western Side of the said River, and to be fifteen English Statute Miles South of the Latitude of the most Southern Part of the said City of Philadelphia, are and shall be, and shall at all Times for ever hereafter be allowed and esteemed to be, the true and exact Limits and Bounds between the said Province of Maryland, and the said Three Lower Counties of New-Castle, Kent, and Sussex, and between the said Provinces, of Maryland and Pensilvania; excepting only, that in case the said North Line from the Tangent of the Circle of New-Castle shall break in upon the said Circle, in such Case, so

much of the said Circle as shall be cut off by the said Line, shall belong to and be Part of the County of New-Castle.

Provided always, and it is hereby mutually covenanted, concluded, and agreed, by and between the Parties to these Presents, that in case it should happen in the Running or Setting out the Lines or Boundaries hereby agreed upon, that the Head or Heads of any River or Rivers leading either into the Bay of Chesapeake, or into the Bay of Delaware, or unto the Sea, shall remain on one Side the Lines and Boundaries hereby agreed to be run or set out, and that the lower Part of such River or Rivers shall remain within or run thro' the other Province or Counties, and on the other Side of such Lines and Boundaries; then, and in such Case, this present Agreement, or any Matter or Thing herein contained, is not intended, and shall not in any Wise be construed or extended to give or yield to the People or Inhabitants of the Province or Counties within whose Limits the Heads of any such River or Rivers shall according to this present Agreement fall or remain, any Sort of Right or Title to carry on any Commerce into the said Bays of Delaware or Chesapeake, or either of them, or into the Sea thro' the lower Parts of such River or Rivers, which may run thro' the Territory or Limits of any other Province or Counties, without the Leave or Licence of the respective Proprietor or Proprietors of the Province or Counties thro' whose Territories such lower Parts of the said River or Rivers shall run, first duly had and obtained; this Agreement, or any thing herein contained, to the contrary thereof in any wise notwithstanding.

This Clause is translated verbatim into the very Commissions, nevertheless, the first Objection made by the Maryland Commissioners was, for that some other different Persons had not also joined in granting our Commission.

IX. That the said Charles Lord Baltimore, and his Heirs and Assigns on his part, and the said John Penn, Thomas Penn, and Richard Penn, and their several and respective Heirs and Assigns on their parts, shall and will, by fit and proper Powers and Instruments, within two Calendar Months from the Day of the Date of these Presents, authorize and appoint a sufficient Number of discreet and proper Persons, not more than seven on each side, to be their respective Commissioners, with full Power to the said seven Persons, or any three or more of them, for the actual running, marking, and laying out, the said Part of a Circle, and the said before-mentioned Lines: which said Commissioners shall give due and proper Notice to each other, and shall fix and agree upon a Time or Times to begin and proceed in the running, marking, and laying out the same; and the same

shall be begun, at the farthest, some time in the Month of October next, and shall be proceeded in with all Fairness, Candour, and Dispatch that may reasonably be. And the said Lines shall be marked out by visible Stones, Posts, Trees, Pillars, Buildings, Land-marks, or other certain Boundaries which may remain and continue; such Boundaries to be marked, on one side, with the Arms of the said Charles Lord Baltimore, and, on the other side, with the Arms of the Proprietors of Pensilvania. And such Lines shall be compleatly so run, mark'd, and laid out, (as far as by this Agreement is intended) on or before the twenty-fifth Day of December, One thousand seven hundred and thirty-three: and, when so done, a true and exact Plan and Survey thereof, with the best and most exact and certain Descriptions that can possibly be given of the same, shall be made up, and sign'd, and seal'd, by the said Commissioners on both sides, and by their Principals, and shall be entred in all the publick Offices, in the said several Provinces and Counties: And moreover it shall be recommended by the respective Proprietors to the Assemblies of the said several Provinces and Counties, forthwith to pass Acts of Legislature for the Visitation upon certain fix'd Days, to be agreed on on both sides (at least once in every three Years) and for the continual Reparation of the said Boundaries and Bound-marks, that no Disputes may arise hereafter concerning the same.

Provided always, and it is hereby agreed, that in Case a sufficient Quorum of the Commissioners to be named on either side, shall not, from time to time, according to the Appointments and Adjournments to be made for that purpose, attend to proceed in the marking and running out the Lines and Bounds aforesaid, for want whereof the same cannot be done within the Time before limited, then, this present Agreement, and every Article and Thing herein contained, shall cease, determine, and be void; and, then, and in such Case, the Party or Parties, whose Commissioners shall make such Default, his or their Heirs, Executors, or Administrators, shall and will forfeit and pay, to the other Party or Parties, whose Commissioners shall attend, his or their Heirs, Executors or Administrators, upon Demand, the Sum of Five Thousand Pounds of lawful Money of Great-Britain.

X. That the said Charles Lord Baltimore, for himself and his Heirs, doth by these Presents for ever renounce, release, and quit claim unto the said John Penn, Thomas Penn, and Richard Penn, and their Heirs, all Rights, Titles, Interest, Powers, Prerogatives, Claims, Demands, and Pretentions, to the said Province of Pensilvania, and to the said Three lower Counties of Newcastle, Kent, and Sussex, to be so bounded as aforesaid,

(Part at least of the same Three lower Counties being now known to be comprized within the Bounds mentioned in the said Charter of Maryland) and shall also, at the Request and Cost in the Law of the said John Penn, Thomas Penn, and Richard Penn, and their Heirs, grant, convey, and assure, in the most effectual Manner, the said Province of Pensilvania, and the said Three Lower Counties to be bounded as aforesaid, and all his and their Right, Title, Interest, Powers, Claims, and Demands, in and to the said Province of Pensilvania, and the said Three Lower Counties to be so bounded as aforesaid, and every Part of the same, free of all Incumbrances by the said Cecilius Baron of Baltimore, Great Grandfather of the said Charles Lord Baltimore, Charles Grandfather of the said Charles Lord Baltimore, Benedict Father of the said Charles Lord Baltimore, or by him the said Charles Lord Baltimore Party hereto, his Heirs or Assigns, excepting such Grants and Agreements to Planters as herein after mentioned, unto the said John Penn, Thomas Penn, and Richard Penn, and their Heirs; TO HAVE AND TO HOLD unto the said John Penn, Thomas Penn, and Richard Penn, and their Heirs, to the only Use and Behoof of them and their Heirs for ever, in such Manner as by them the said John Penn, Thomas Penn, and Richard Penn, or their Heirs, or their Council learned in the Law, shall be reasonably devised, advised, and required. AND on the other Hand, the said John Penn, Thomas Penn, and Richard Penn, for themselves and their Heirs, do by these Presents for ever renounce and quit claim unto the said Charles Lord Baltimore and his Heirs, all Rights, Titles, Interest, Powers, Prerogatives, Claims, Demands, and Pretensions to the said Province of Maryland, to be so bounded as aforesaid, (Part whereof when so bounded being apprehended to be comprized within the Bounds mentioned in the said Charter for Pensilvania;) and shall also at the Request and Cost in the Law of the said Charles Lord Baltimore and his Heirs, grant, convey, and assure, in the most effectual Manner the said Province of Maryland, to be so bounded as aforesaid, and all their and every of their Right, Title, Interest, Powers, Claims, and Demands, in and to the said Province of Maryland, to be so bounded as aforesaid, and every Part of the same, (free of all Incumbrances by the said William Penn the Grandfather, William Penn the Father, Springett Penn Esq; deceased, William Penn the Son, John Penn, Thomas Penn, and Richard Penn, their Heirs or Assigns) excepting such Grants or Agreements to Planters as herein after mentioned, unto the said Charles Lord Baltimore and his Heirs, to have and to hold unto the said Charles Lord Baltimore and his Heirs, to the only Use and Behoof of him and his Heirs

for ever, in such Manner as by him or them, or his or their Council learned in the Law, shall be reasonably devised, advised, and required.

XI. And whereas during the Disputes which have hitherto subsisted, and now are accommodated between the Parties to these Presents, divers Persons under Grants, Patents, Leases, Warrants, Licences and Agreements, made and granted from and agreed with the said Charles Lord Baltimore and his Ancestors, before the fifteenth Day of May, One thousand seven hundred twenty and four, may have cleared, occupied and possessed, several Parcels of Lands within the Limits and Bounds hereby yielded and agreed upon for the said Province of Pennsylvania, and for the said Three Lower Counties: And in like manner other Persons under Grants, Patents, Leases, Warrants, Licences and Agreements made and granted from, and agreed with the said John Penn, Thomas Penn, and Richard Penn, or their Ancestors, before the said fifteenth Day of May, One thousand seven hundred twenty and four, may have cleared, occupied and possessed several Parcels of Lands within the Limits and Bounds hereby yielded and agreed upon for the said Province of Maryland, and it may be proper to quiet such Occupiers and Possessors in their respective Possessions (which might otherwise be disturbed by this present Agreement of the Proprietors, under some Restrictions;) It is therefore mutually agreed, that in order to the Information of the Parties to these Presents, touching the Premises, each of the said Proprietors shall have full and free Liberty to take Copies at their respective Costs and Charges, of all Grants, Patents, Leases, Warrants, Licences and Agreements, which at any time before the said fifteenth Day of May, One thousand seven hundred twenty and four, have been made or granted by the respective Proprietors or their Ancestors, and under which any of the said Occupiers do hold or claim any such Parcels of Land: And in order to quiet and settle such Occupiers, every of them shall and may, upon Request and Payment of the accustomed Fees, in such Cases only, have new Grants or Patents from the respective Proprietors within whose Territory or Limits their Lands, by virtue of, or according to this present Agreement, shall lie, for the like Estate, Term, and Interest, as mentioned in their original Grants, Warrants, Leases, Licences or Agreements, upon condition that the said Occupiers respectively do first attorn, and become Tenants to their respective Proprietors within whose Territory or Limits their Lands now lie, by virtue of, or according to this present Agreement, and do submit themselves in all Things to the Government thereof, and do pay to their new Proprietor or Proprietors (unless it shall be dispensed

with by him or them) all such Fines, Rents and Arrearages of Rents and Duties, as by their original Grants, Licences or Agreements, were to have been payed to their former Grantor or Proprietor, and which have not been really and bona fide payed to or to the Use of such their former Proprietor; and for the time to come, such Occupiers shall be put upon the like Foot and Condition with the rest of the Occupiers and Tenants who hold Lands in such Parts of the said respective Provinces and Counties as have never been in Contest; and such Occupiers and Tenants claiming originally under another Proprietor, as aforesaid, shall hold their Lands and have Patents thereof granted them by their new Proprietor, subject to the like Fines, Rents, Quit-Rents, Duties, Services and Reservations, as the other Landholders are, and have been generally subject to in the respective Provinces and Counties to which they shall belong. Provided always, that in Cases where any Persons during the Disputes which have subsisted between the said Proprietors have taken double Title; that is to say, from both the said Proprietors or their Commissioners or Officers, under which they have sheltered themselves by turns against each of the said Proprietors, and also in Cases where any Persons during the said disputes, have of their own authority seated themselves down upon any Parcels of Lands, without Licence or Authority in Writing from either of the said Proprietors, such Persons in respect of such Lands, are by no means to be included in this present Article, but are (however) to be treated with Moderation, and with some Regard; and the more so, in case they have heretofore actually paid the usual Quit-Rents and Services to either of the said Proprietors, and provided they bring in, surrender or yield up their former Grant, Licence, Warrant, Lease or Agreement, and submit to hold only under the proper Lord or Proprietor as the Case may be.

XII. That in case the Parties hereto can conclude upon any further Clauses in favour of the Occupiers of any Lands within the Bounds heretofore disputed, but by these Presents fixed and determined; the same shall be contained in a subsequent Agreement between them.

Lastly, That all the Parties hereto, and their Representatives, shall at all times hereafter use all friendly Means and Offices to the utmost of their power, to assist and support this present Agreement, and the several and respective Rights, Interests and Pretensions of the Parties, by virtue hereof.

In Witness, &c.

The foregoing Articles are proved to be executed by all Parties, by Mr. Taylor and by Paris. And are Exhibits Art. And Par. No. 7.

NOTE—Upon some of the six several parts of those Articles there was an Endorsement executed (of the same Date with the Articles) by William Penn, Letitia Aubrey and Charles Fell and Gulielma Maria his Wife; whereby all those Persons assented to those Articles, and promised not to hinder or obstruct the said Agreement, or the due Execution thereof, in any manner or wise. Endorsement on the said Articles, Par. No. 7. and proved by Paris.

1732, *May 12.*

The Draught of the Commission prepared for the Plaintiffs to authorise their Commissioners to carry the Articles into Execution, which the Defendant and his Solicitor approved; with Mr. Sharpe's Endorsement thereon of the Names which he would have inserted for the Defendant's Commissioners. This is proved by Paris, and is Exhibit Par. No. 8.

Same Day.

The Original Commission executed by the Plaintiffs, authorising their Commissioners to carry the Agreement into Execution, which recites the Agreement most minutely. The Execution of this Commission by the Plaintiffs is proved by Mr. Taylor, and this Exhibit is in Parchment markt Com.

And thus the written Articles of Agreement were executed.

CHAP. XIV. *From the Time of sealing the Articles here in London in May 1732, down to the End of the Year 1733.*

Aug. 26.

An Order of Council, which does not directly make any Proof in the Matter in question, otherwise than as a very strong Precedent, (founded upon the present Lord Chancellor's Opinion) that the Crown will not disturb ancient Possessions, or take Advantage of defective Titles in America. The Order altogether is long, but the Case was, the Crown had ordered Mr. Dunbar, the Surveyor General, to endeavour to form a Colony or Settlement in a Part of New England, which seemed to be unimproved, adjacent to Nova Scotia. Hereupon, Samuel Waldo, Elisha Cook and Sir Biby Lake, and others, petitioned the King, and set up a Title thereto, and some Endeavour that had been used to settle the same, and some Expences layd out therein, but that frequent Indian Wars had disturbed them, and it came out, that the French had conquered that Territory in 1696, and that in the Year 1710, it was reconquered under General Nicholson; and was afterwards ceded by France, to Great Britain, by the Treaty of Utrecht: and the Matter being referred to the then Attorney and Solicitor General (Yorke

and Talbot), They reported, that some of the Petitioners had Titles under the Council of Plymouth, and others from Indians, pretending to be Owners of the Land, under which large Sums had been laid out, in endeavouring to settle and improve, and tho' interrupted and defeated by frequent Wars and Incursions of the Indians, yet, some of their Tenants appeared to be still in Possession of some Parts of the said Land. The Attorney and Sollicitor also reported. "That some Objections were made, "before them, to the Nature of the Grants and Conveyances under "which the Petitioners claimed, and to the Manner of deducing "down their Titles, but they conceive that, in Questions of "this kind, concerning Rights to Lands in the West Indies, "and upon Enquiries of this Nature, the same Regularity and "Exactness is not to be expected, as in private Suits, concerning "Titles to Lands in England; but that, in these Cases, the "principal Regard ought to be had to the Possession, and the "Expences the Parties have been at in endeavouring to settle and "cultivate such Lands; Therefore, upon the whole Matter, they "are of Opinion that the Petitioners, their Tenants or Agents, "ought not to be disturbed in their Possession, or interrupted "in carrying on their Settlements, in the Lands granted to "them, within the District in question." Thereupon the Lords "of the Committee of Council also reported, "That they agreed "in Opinion with his Majesty's Attorney and Sollicitor General "(Inter alia) That the Petitioners, their Tenants or Agents, "ought not to be disturbed in their Possession, or interrupted "in carrying on their Settlements, in the Lands granted to them "within the District in question." And therefore advised the King to revoke, and he accordingly, by his Order in Council of this Date. did revoke. the Instructions which he had before given on 27 April 1730, to the Governor of Nova Scotia, and the Surveyor General, relating to the settling the said Lands, and ordered the Surveyor General to quit the Possession of all the said Lands. Original Order of Council under Privy Council Seal, Co. Off. No. 26.

1732. Oct. 7.

Bargain and Sale enrolled, whereby William Penn the Grandson, conveyed his 5000*l*. Mortgage upon Pensilvania, unto Alexander Forbes, for securing a Sum of 2500*l*. which he borrowed of him. The Deed proved by Paris.

Oct. 6, 7.

The Minutes of this Day's First Meeting of the Commissioners on both Sides at New-Town in Maryland, (as they were taken and kept by the Pensilvania Commissioners.) In which, after naming the Commissioners who were present, on both Sides,

they go on in the like Words as that Minute set forth by the Defendant in Fol. 456. in the Schedule to his Answer; which is contained in Fol. 25 and 26. of this Brief. This Minute is additionally proved by Samuel Preston and James Steel, two of our Commissioners. And is in the Pensilvania Exhibits, No. A. 1.

Oct. 30. 31. Nov. 1. 2.

The Defendant in the Schedule to his Answer, at Fol. 460. has given us a very short imperfect Minute, return'd to him by his Commissioners, and as if it had passed upon the 30th of October only. Whereas we have the following full Minutes of all those four Days, kept by our Commissioners, and proved by them, viz.

Oct. 30.

Five of the Commissioners appointed by Lord Baltimore, and all the 7 Commissioners appointed by the Plaintiffs being met, on the 30th of October, at Newcastle, in order to proceed to mark out the Circle mentioned in the Agreement between the said Proprietors. The Lieutenant-Governor of Maryland, opening the Conference, declared, They were now met to proceed to run the Circle about Newcastle, mentioned in the 2d Article of the Agreement, which he read; and as, in that Article, the Circle is said to be the Circle mentioned in the Charter for Pensilvania, and the Deed of Feoffment from the Duke of York. 'twas necessary they should see that Charter and the Deed of Feoffment. The Commissioners of Pensilvania answered that the Agreement fully recited the necessary Parts of the said Charter and Deed. That the respective Commissions from the Proprietors enjoyn'd the Commissioners to execute the several Articles agreed on, and that, as the Proprietors were mutually satisfied with the Recitals made in the Agreement, the Commissioners could want no further Satisfaction than was contained in those Recitals. But the Commissioners of Maryland insisting upon their Demand, those of Pensilvania condescended to send to Philadelphia for the Charter of Pensilvania, and for an Exemplification of the Deed of Feoffment from the Records of New York, where it was first entered, the Original being in England.

Oct. 31.

Present the same Commissioners. The Charter of Pensilvania under the Great Seal, with the Exemplification of the Duke of York's Deed of Feoffment to Mr. Penn for the Circle about Newcastle being brought from Philadelphia, the Commissioners of Maryland desired Copies of the descriptive Parts of the said Charter and Deed, wherein the said Circle was mentioned.

It was answered by those of Pensilvania, That the said Charter and Deed, with the Agreement between the Proprietors, being All on the Board, the Recitals, in the Agreement, might be now compared with the others, by the Commissioners present, and, if found to agree, they could not want any other Satisfaction; and, being compared, they were found exactly to agree verbatim, allowing for the Change of Words necessary in making Recitals. The Commissioners of Maryland continued to insist on Copies of the descriptive Parts, which, tho' represented to be altogether unnecessary after the Satisfaction already given them, were, notwithstanding, drawn out and delivered to them, certified to be true copies of the said descriptive parts under the hands of two of the Pensilvania Commissioners. It was then proposed that we should agree on a Place of beginning for running the 12 Miles distance; upon which much was said. And the Commissioners of Maryland alledging They must further consider it, the Business was adjourned till 3 in the Afternoon.

The same Commissioners meeting in the Afternoon. Those of Maryland questioned whether, by their Commission from their Proprietor They had full Power to run the described Circle? For, as there could be no Circle without a Center, that Center must be first had; but, it was no where directed by the Articles or Commission; and they conceived they had no Power to make one. It was answer'd, that the Commissioners, being empower'd and required to execute the Agreement in that Part, they were empower'd to do all Things necessary to the Performance of it: For that it is a known Maxim in Law that where a Thing is prescribed to be done, the Means are, at the same time, prescribed. That, from Newtown, the Commissioners had adjourned to meet at Newcastle the 30th of October in order to proceed to mark out the Circle; That the Articles enjoyn'd the Business to be begun in the Month of October, at furthest; That this was the Afternoon of the last Day of October, and yet, nothing was done to any Effect. Those of Maryland answer'd, that every body must allow they had enter'd on the Business: They were now upon it, and they should all acknowledge, before any number of Witnesses, that they had begun the Business; But, how to proceed is the Difficulty, which appears such to them, as that they must further advise on it. The Commissioners of Pensilvania declared themselves fully empower'd, as they conceived, to do every thing necessary to the full Execution of their Commission; and, to save time, the Surveyors might be sent to measure the Town. The Commissioners of Maryland then proposed that the Company should walk about the Town and view it; and accordingly the Com-

missioners, of both Parts, adjurning till Morning, walkt out to view the Town.

Nov. 1.

The Commissioners being met, The Governor of Maryland, in Behalf of the Gentlemen of that Province, declared that, having advised both with Lawyers and Mathematicians, on the Subject of finding a Center, they were fully satisfied that, as the Center for the Circle is not directed by the Articles, or their Commission, They have no Power to make one; but that, as his Lordship's Arrival in Maryland is every Day expected, they thought it proper for them to apply to his Lordship at his coming: and if he would direct them to find a Center, they would readily obey; To which it was answered that the Proprietors, on both Parts, had absolutely concluded an Agreement, in full and clear Terms; That they had given full Powers to their Commissioners on both Sides, to execute that Agreement; And, the better to enable them, a printed Draft of the Work was annexed in the Margin. both of the Articles and Commissions, which was to be explanative and directive in case of any Difficulty; That the Town of Newcastle was fairly marked out, in that Draft, with a Central point in the Middle of it, on which the Circle in the Draft was drawn: That it was easy to find this Center, as it is there pointed out; Another Objection also that had been made, from the Suggestion of some Mathematician, that it is impracticable to draw any true Circle of such an Extent, in the Woods or Fields, being largely spoke to, the Governor of Maryland continued to insist on it, that they had no Power to find any Center, for that, if they fix on any, it may, as probably, be wrong as right, and, if wrong, it may injure Men in their Property, which they would avoid; Therefore, they must first take the further Directions of their Lord Proprietor, and, for that End, desire we may adjourn for some time, that they may have the Opportunity. The Commissioners, of Maryland appearing fixed in this, the Consideration of it was referred to the Afternoon.

The Commissioners meeting in the Aftenoon, those of Pensilvania said, that as they met here, fully prepared and resolved, to proceed to Business, the Proposal of an Adjournment was unexpected; and first they desired to know, to what Time those of Maryland desired the Adjournment should be made? Which, when considered, might the better enable them to judge whether they could agree to it; the Gentlemen of Maryland said, that, unless it were first agreed to adjourn, it would be to no Purpose to propose a Time; and insisted, that those of Pensilvania should

first agree to an Adjournment; which they declining, and much being spoken to it, It was insisted, on the Part of Pensilvania, that Minutes should be taken of what has past; which being also largely spoke to, and those of Maryland persisting in it, that all Minutes are unnecessary, further than to enter the Meetings and Adjournment; that each Side might keep what Minutes they pleased: The Commissioners of Pensilvania insisted, that it was absolutely necessary, in the Execution of all Commissions, to keep some Minutes, as a Register of the Commissioners Proceedings, otherwise, how shall it appear, what has been done in them? That they take this to be absolutely necessary in the present Case, and must appear so, in the Eyes of all Men of Understanding, acquainted with such Affairs; but those of Maryland declined to join in such Minutes, and then, they proposed the first of February, for the Day of Adjournment to meet at Newcastle. The Commissioners of Pensilvania took till Morning to give their Answer, which is in these Words; Gentlemen, You cannot but be sensible, that after the Preparations made to proceed on the execution of our Commissions, it cannot but be a Disappointment to us, to have an Adjournment proposed to us; for, as the whole Articles clearly shewed the Proprietors on both Sides were fully resolved, in the most amicable manner, to have their mutual Boundaries fixed, for which End, they had appointed us their Commissioners to run the Lines they had agreed on. and it is evident to us, and we are fully satisfied, that we have full Power to execute them, which it is required should be done with all the Fairness, Candour and Dispatch, that may be reasonable; but as the Reason assigned for the Adjournment is, the general Expectation of the Arrival of the Lord Baltimore in some short Time in Maryland. whom you are desirous further to consult, we have so very great Regard for that worthy Nobleman, and so great an esteem of his Honour, that, on that Consideration, alone, we agree to the Adjournment proposed; viz. the first Day of February ensuing, then to meet at the Town of Newcastle.

Nov. 2.

The Commissioners being met, those of Pensilvania said, that, having considered the Adjournment proposed by the Gentlemen of Maryland, they had come to a Conclusion thereupon: but as, at a former Meeting, they had strenuously insisted, that Minutes of what had now past should be kept, they thought it incumbent on them, to read at the Board the Minutes they had taken, at the Close of which their Answer to the Adjournment would appear; the Gentlemen of Maryland answering, that

those of Pensilvania, undoubtedly had the Liberty to read what Paper they pleased; the foregoing Minutes were read: The Adjournment being thus agreed to, the Gentlemen of Maryland were asked, whether they could object to the Truth of these Minutes? Their Governor answered, he had nothing to say to any Minutes we should take; but the same Question being repeated, and an Answer pressed for, he said, the Arguments used on their Part were not, in these Minutes, set in so strong a Light, as he believed he could place them in, if he were to draw the Minutes, and particularly observed that the Reasons he had given, for insisting on a Sight of the Charter for Pensilvania, and Deed of Feoffment for Newcastle, were not taken notice of; To which it was answered, that all Arguments were designedly omitted: He then desired one of the Commissioners, on the Part of Maryland, to read a Minute they had prepared, which mentioning only that, in pursuance of their former Adjournment, the Commissioners had met at Newcastle, to run the Circle, specified in the Agreement, and that, Difficultes having arisen touching the same, they had adjourned to the first Day of February, was objected to by the Commissioners on the Part of Pensilvania, as imperfect and unsatisfactory. The Governor of Maryland then producing a Paper, of some Notes he had taken, asked what the Gentlemen of Pensilvania could say to that? Which being read by him, was to this Effect, that five of the Commissioners for Maryland, and all those for Pensilvania, being met, in pursuance of their Adjournment at Newtown, He, upon reading the second Article of Agreement, desired a Sight of the Charter for Pensilvania, and Deed of Feoffment for Newcastle; that it had been argued by the Commissioners on the Part of Pensilvania, that the Charter and Deed, being recited in the Agreement, the Proprietors on both Parts were bound by the said Recitals, whether true or false. This being read, the Commissioners for Pensilvania immediately objected thereto, and insisted that no such Words had ever been used, by any of them, for it could not be supposed that the Recitals drawn by Council, and mutually signed by the Proprietors, could be false; the Governor of Maryland said, that, tho' these Words might not have been used, yet they were consequential to what was said; and then, putting up the Paper, without offering any other Minute, or an Amendment to that, on the Objection made, and observing that, an Adjournment being agreed to, there was no occasion for further Disputes, at this time; the Commissioners taking leave of each other, parted.

The foregoing four Days Minutes are all upon one Paper, and are proved by Messieurs Preston and Logan, and are the Pensilvania Exhibit marked Letter C.

Jan. 26.

A Commission from John, Thomas and Richard Penn of this Date, appointing (in their own Names) Major Gordon the former Governor, to be Governor of the said Province of Pennsylvania and Lower Counties. Newcastle Records, No. 11, Fol. 100.

Note,

They had before purchased a Release from their Father's Heir at Law.

Feb. 1, 2, 3.

Lord Baltimore in the Schedule to his Answer at Fol. 463. and the following Sheets (which are in Fol. 26. and 27. of this Brief) has given the Account of these Days Proceedings of the Commissioners, in such manner as he says his Commissioners returned the same to him; But as they are very short and defective, especially of all that past on the 3d of February (after the pretended Disappointment for about an Hour on our Parts) so we have Proof that one John Georges is dead, and we have Proof that he swore to an Affidavit (made upon the 26th Day of the same February) of what past on those Days; and our present Witness also says, he believes that that Affidavit was writ by the said John Georges: On which account, as a Paper writ by a man since dead (though not as an affidavit) we hope we may read it; And we have, the Copies of the Notices, duly proved, which were served upon the Maryland Commissioners upon the said 3d of February; which written Paper, and which Notices, are as follows, viz:

John Georges of Philadelphia in the Province of Pensilvania Gent. being solemnly sworn on the Holy Evangelists maketh Oath, That he was at Newcastle on Delaware the first Day of February Instant, where he saw Samuel Ogle, Charles Calvert, Matthew Tilghman Ward, Michael Howard, Benjamin Tasker and Edmund Jennings of Maryland Esquires, and likewise Isaac Norris, Samuel Preston, Andrew Hamilton, James Steel, and Robert Charles of the Province of Pensilvania; That he understood these Gentlemen to be Commissioners appointed for the Execution of certain Articles agreed upon by the Proprietaries of Pensilvania and Maryland. and had met together in the Afternoon of that Day, and likewise in the Forenoon and Afternoon of the Day following, which was the 2d Current; That this Deponent, in the Evening of that Day, being in Company with the above named Gentlemen of Pensilvania, heard them make great Complaints, of the Usage they received at the Hands of the Commissioners of Maryland, in giving needless Delays, and raising unaccountable Objections to the Work then before

them; That they particularly complained that, notwithstanding they had repeatedly pressed the Commissioners of Maryland to suffer a Clerk or Clerks to be present at their Meetings, and take Minutes of what should pass between them, and had supported the Proposal by the very best and most solid Arguments in their Power, yet those of Maryland persisted in a flat Denial, would allow no other Persons but the Commissioners to be present at the Meetings, nor would consent that the Proceedings should be carried on in Writing; That the Commissioners of Maryland amused them, the Commissioners of Pensilvania, all Day long, with a very strange Interpretation of the Circle to be described round Newcastle, as if the same was to contain only twelve Miles in Circumference, instead of being described with a Radius of twelve Miles; That it had been proposed, on this Point, to consult the Mathematicians and Artists attending on both sides; and that a Question, stated by the Commissioners of Maryland, though unfairly as was apprehended by those of Pensilvania, had been offered; That besides, as no Center was directed by the Agreement, they questioned whether they had any power to fix one. And this Deponent saith, that next day, being the 3d of this Instant February, he went, in the Morning, to the Lodgings of some of the Pensilvania Commissioners, when he found they were all met together with their Artists, and were reducing into Writing their Thoughts on the Dispute then in Agitation touching the Circle, which they told this Deponent they intended to deliver to the Commissioners of Maryland, at their Meeting in the Forenoon; That this Deponent observed the Commissioners of Pensilvania to be in a great hurry for finishing the same; That three of the said Commissioners, viz. Messieurs Norris, Preston and Steel, went to the Court House of Newcastle, to meet the Commissioners of Maryland, leaving Messieurs Hamilton and Charles with the Artists; That this Deponent was sent to Mr. Steel, for a Paper in his Custody; That no sooner was the Paper, intended for the Commissioners of Maryland, drawn up, and the same, with a Copy thereof, duly compared by this Deponent, and the said Commissioners setting out for the Court-House, but Mr. Norris, returning, said, that Governor Ogle had taken it ill to have waited so long, and had broke up the Meeting; Whereupon Mr. Charles, with this Deponent in Company, went to Governor Ogle's Lodgings, and there this Deponent heard Mr. Charles tell the said Governor that it could not but surprize the Commissioners of Pensilvania to find that they were gone from the Court House; That probably it might, now, be an Hour, or an hour and half after the precise Time to which they stood adjourned; but could not believe that so small a Delay could be interpreted

a Failure in Meeting; since that, Yesterday, the Commissioners of Pensilvania had waited a full Hour after the adjourned Time for those of Maryland; and that they were now ready to wait of them, and a good deal of Business might be transacted before Dinner; To which Governor Ogle replied, that he could not think of meeting the Commissioners of Pensilvania, till he had consulted the Matter; for that, if any Advantage had arisen to Lord Baltimore his Constituent by the said Failure, he the said Mr. Ogle should think it imprudent to give it up; upon which, Mr. Charles again pressed the Meeting, but the other refused. This passed some time after 12 o'Clock at Noon, and, about an Hour thereafter, several of the Commissioners of Pensilvania, with this Deponent, went to the Lodgings of Governor Ogle, to wait upon him and the rest of the Commissioners for Maryland to Dinner, according to an Invitation given by the Gentlemen of Pensilvania the Day before; That the Commissioners on both sides, and this Deponent, dined together, at one Henry Newton's in the said Town of Newcastle; That, about an Hour after Dinner, Mr. Ogle, with the rest of Lord Baltimore's Commissioners, departed; That soon after, the Commissioners on the side of Pensilvania, with this Deponent, waited upon Mr. Ogle at his Lodgings, where were present two others of the Maryland Commissioners, viz. the Honourable Charles Calvert Esq; and Mr. Edmund Jennings; That Mr. Norris began to make some Apologies for the Commissioners of Pensilvania not meeting those of Maryland at the precise Hour agreed upon; That the said Mr. Jennings retired from the Company, with a View, as this Deponent supposes, that there should not be a Quorum of their side: The Reasons of the Failure of Meeting, at the precise Time appointed, were told; and that one chief Cause thereof was, that as the Commissioners of Maryland having, the Day before, objected something so very extraordinary, concerning the Circle about Newcastle, that those on the side of Pensilvania thought it proper to give their Answer thereto in Writing, the drawing up of which occasioned their not being precisely punctual to Time; That this Deponent having the Paper, containing those Answers, about him, signed by five of the Commissioners for Pensilvania, with a Copy thereof, he delivered it to Mr. Hamilton, who gave it into Mr. Ogle's Hands. That Mr. Ogle looked at the Beginning and the End of it, and offered it back again to Mr. Hamilton; but he refusing to take it, Mr. Ogle threw it carelessly down upon a Chair near him, and said that they were not then a Quorum, and therefore, could not enter upon any Business; That Mr. Hamilton said the Commissioners of Pensilvania were now ready and would meet those of Maryland, either in the Court-House,

or at any other place, where they would appoint; That Mr. Ogle insisted, that as they had failed in Point of Time in the Morning, he should not think himself obliged to appoint any other Meeting; and, as the Affair between the two Proprietors of Maryland and Pensilvania was of very great consequence, that if any Benefit should accrue to his Constituent by such Failure, that he could not answer it, either to Lord Baltimore or himself, if he did not take the Advantage of it. That, thereupon, Mr. Hamilton observed that, if he imagined the Failure of an Hour, or an Hour and a half, could be understood as a wilful Design to break up their Meeting, that he would most certainly find himself greatly mistaken; for that, in all Cases, where Commissioners are appointed to transact any Affairs, the Delay of an Hour, or two, or three, or more, is of little or no Signification; for that, though any one particular Hour might be appointed, yet, if they met at any time in that Day it would be sufficient, and that it was an adjudged Rule, in the Books of Law, that Commissioners on one side were obliged to wait for those of the other from Nine o'Clock in the Morning till Six in the Evening. Mr. Hamilton, likewise, observed that it was very extraordinary they should so rigidly insist upon the Failure of so small a Space of Time, when they very well knew, that at their former Meetings at Newtown, and the said Town of Newcastle, some time in October last, many Delays were occasioned on their side; at Newtown especially, that the Articles of Agreement were objected to, because some of Mr. Penn's Family did not sign them; That it was made appear, they were signed by all the necessary Persons concerned; and that the rest of the Commissioners were satisfied in that Point, when, at last, Mr. Ogle gave it up, but with a Reserve, for that time only; and that, upon their meeting afterwards at Newcastle, pursuant to their Adjournment at Newtown, other Difficulties were started; For, notwithstanding that, in the Articles of Agreement, Recitals of all the Grants and Deeds necessary were made, yet, they insisted upon seeing the originals, in Compliance to which the Commissioners of Pensilvania sent up one of their Number to Philadelphia, to bring down the same, which occasioned a Delay of one Day, at least; That, when those Originals were produced, and found to be agreeable to the respective Recitements, they further insisted to have Copies thereof, or such Parts thereof as they thought necessary, which was likewise complied with; Mr. Hamilton further mentioned that Mr. Ogle might very well remember, that it was the Opinion of the Gentlemen of Pensilvania that a Clerk or Clerks should be appointed to take Minutes of the Proceedings of the Commissioners on both sides, that their Transactions might appear, which

the Gentlemen of Maryland would not agree to; That it was then proposed by the Commissioners of Pensilvania that each Side should take their own Minutes, and exchange them signed, but that was also refused on the side of Maryland; That, from such Proceedings, Mr. Hamilton said, he could not help observing that it appeared to him that the Gentlemen of Maryland were not inclined to execute the Articles with such Fairness, Candour and Dispatch as is therein recommended. Mr. Ogle replied that as he knew little or nothing of the Law, he desired to be excused from entering into an Argument with one of that Profession: A Meeting of the Commissioners being again pressed by those of Pensilvania, and refused on the side of Maryland, Mr. Charles read a Notice of Meeting at the Court-House of the said Town of Newcastle at Six of the Clock that Evening, which Mr. Ogle refused to take notice of, but it was left with him, and the Commissioners of Pensilvania attended at the said Court-House from Six of the Clock till some time after Eight, this Deponent being with them all the while; but as the Commissioners of Maryland did not come there, it was thought proper to give them fresh Notice of meeting on the Monday following, at Ten o'Clock in the Forenoon; and that the Deponent waited upon Mr. Ogle at his Lodgings, between the Hours of Nine and Ten in the Evening, and acquainted him that one of the Commissioners on the side of Pensilvania was there, with a Message to deliver him from the rest; That Mr. Ogle answered, it was an unseasonable Time, and would receive no Messages, that he did not choose to say an uncivil thing to any Gentleman, and therefore desired to be excused from admitting him; That though Mr. Ogle would not suffer that Commissioner to wait upon him, yet the Notice of Meeting, at Ten o'Clock, on the Monday following, as above mentioned, was (as this Deponent was informed) served upon four of the Commissioners for Maryland, that same Night, but, instead of paying any regard thereto, all the Commissioners for Maryland set out from Newcastle the next Day, being Sunday. This Deponent thinks proper to observe, that though what he has above deposed may not be delivered in the same Words, nor in the same Order, in which they passed; yet, that the several Depositions are strictly true, and as nearly in the same Words and Order as his Memory can furnish him with, and further this Deponent saith not. Sworn before the Mayor of Philadelphia the 26th of the same February 1732.

Mr. Hasell the Mayor of Philadelphia not only proves that Mr. Georges swore to the foregoing Affidavit before him, but he also adds, he believes the said Affidavit was writ by the said Georges, and it makes the Pensilvania Exhibit markt Q. q.

1732, *Feb. 3.*

The following is a very sensible and material Paper, which our Commissioners delivered to Mr. Ogle upon this Day, in Writing, in answer to the pretended Doubts about the Center and Dimensions of the Circle, viz.

The Commissioners on the Part of Maryland having made two Objections against running the Circle, or Part of a Circle, about the Town of Newcastle, as directed by the Agreement made between the Proprietaries of Pensilvania and Maryland. 1. For that there being no Center fixed, or agreed upon by the said Proprietors, from whence the said Circle shall be drawn, they conceive they have no Power to make a Center, and therefore are not warranted by their Commissions. to run the said Circle. 2dly. For that the Deed of Bargain and Sale, or Feoffment, from the late Duke of York, to the late William Penn Esq; the elder, for the Town of Newcastle, and the Lands about the same, being expressed in these Words, to wit, All that the Town of Newcastle otherwise called Delaware, and all that Tract of Land lying within the Compass or Circle of twelve Miles about the same, seituat lying and being upon the River Delaware in America, the said Commissioners for Maryland do object, That the Circumference or Periphery of that Circle is to be twelve Miles, which they say will make a Diameter scarce four Miles, or at most, it will but make a Diameter of twelve Miles; so that the Radius of the Circle to be run by the present Agreement about the Town of Newcastle will be but six Miles at most, and that the Words in the Articles of Agreement and Commissions, which direct that the Circle shall be at the Distance of twelve English Statute Miles from the Town of Newcastle, are, either superfluous, or are contradictory to the Description in the Deed of Feoffment, and therefore, void in themselves. To which Objections, the Commissioners on the Part of Pensilvania, answer, that they conceive the Commissioners on both sides, being empowered and directed by their Commissions, in pursuance and in part performance of the said Articles of Agreement, to draw and mark out the said Circle mentioned in the Charter of Pensilvania and Deed of Bargain and Sale or Feoffment of Newcastle, or so much thereof as shall be requisite, at twelve Miles Distance from the Town of Newcastle, which twelve Miles shall be twelve English Statute Miles, and, to do every thing necessary for running the same accordingly, and that the Words in the said Deed, as well as the Words in the said Articles of Agreement and the several Commissions from the respective Proprietors to their Commissioners, contains such a Certainty, as will well warrant the Commissioners to proceed in drawing and marking out the said Circle, or so

much thereof as shall be thought requisite. As to the second Objection, The Commissioners of Pensilvania are of opinion, that it is not from the Words of the before mentioned Deed, only, that the Radius of the said Circle is to be judged of or measured, but, likewise, from the Charter of Pensilvania, and the Grant of the late Duke of York to William Penn Esq; the Elder, for that Tract of Land upon Delaware River and Bay, now called by the Names of Sussex, Kent, and Part of Newcastle County. And, if any Doubt could arise, upon the Words of the Deed of Bargain and Sale for the Town of Newcastle, &c. concerning the Radius of the Circle of twelve Miles about the said Town, we conceive it is fully explained, cleared up, and reduced to a Certainty, by the aforesaid Charter and Deeds; for, it is to be observed, that, as the Town of Newcastle and the twelve Miles round the same, was originally appropriated by the said late Duke of York for certain Purposes, before he granted the same to the said William Penn, so, King Charles the Second, when he granted the Province of Pensilvania, took care not to encroach upon that Circle, but begins the Bounds of the said Province from twelve Miles distant Northward of Newcastle Town. Thus, by the King's Grant of the Province of Pensilvania, we see, that he understood the Periphery or Circumference of the Circle about the Town of Newcastle to be twelve Miles distant from the same. It is further observable that, by the Grant of the said late Duke of York to the said late William Penn the Elder, of that Tract of Land now containing Sussex, Kent and Part of Newcastle County, the said Duke, who was at the Time of making the said Grant, Owner of both the said Town of Newcastle and the twelve Miles round the same, and also of the said Tract of Land lying on the River and Bay of Delaware, understood the Circumference of the said Circle to be at the Distance of twelve Miles from the Town of Newcastle, and, accordingly, describes the Bounds of the said Tract of Land as lying on Delaware River and Bay, and beginning twelve Miles South from the Town of Newcastle and extending South to Cape Henlopen, &c. From all which, we conceive, it is most evident that the Circumference of the Circle about the Town of Newcastle is twelve Miles distance from the same, for so it appears King Charles the Second, who was the original Granter, understood it, when he bounded the Province of Pensilvania at the Distance of twelve Miles North of the Town of Newcastle; And the said late Duke of York, who was Owner of all the Land to the Southward of Pensilvania as far as Cape Henlopen, and had the unquestionable Right to declare the Meaning of his own Grant, he has declared how he understood the Extent of that Circle, by beginning his Grant of the Lands

lying on Delaware and to the Southward of the said Town of Newcastle at twelve Miles Distance from the same. But, were it possible, after Consideration had of the said Charter and Deeds, for any Person to be in doubt, about the Extent of the said Circle, or Part of the Circle, now to be markt out by the Commissioners, we, on the Part of Pensilvania, are clearly of opinion that the Proprietors of both Provinces, who are the sole Owners of all the Lands lying between the Bay of Chesapeake and the River Susquehanna to the Westward, and the Bay and River of Delaware to the Eastward, have, as they had an undoubted Right to do, in most full and express Terms, removed that Doubt, by the second Article of their Agreement, where they say, that there shall be the said Circle mentioned in the said Charter for Pensilvania and Deed of Bargain and Sale or Feoffment of Newcastle (or so much thereof as is requisite) drawn and marked out at the twelve Miles Distance from the Town of Newcastle, which twelve Miles shall be twelve English Statute Miles. And as to the Objection, that so much of this Article as directs the Circle to be at twelve Miles distance from the Town of Newcastle is superfluous, or contradictory to the Deeds of Feoffment aforesaid, and, therefore, void in itself, we do not conceive it deserves any other Answer than to say, that this Article is neither superfluous nor contradictory, but a plain Declaration of what has been always understood to be meant by twelve Miles about the Town of Newcastle; And that the Proprietors of Maryland and Pensilvania had, undoubtedly, a good Right to divide their own Lands in such manner as they thought fit. And they have, accordingly, agreed that the Circle about the Town of Newcastle shall be drawn and markt out at the Distance of twelve English Statute Miles from the said Town, and the Commissioners on the Part of Pensilvania are now ready, and offer themselves to proceed to the drawing and marking out the same accordingly.

Note.

My Lord Baltimore in the Schedule to his Answer, at Fol. 573, admits that the foregoing Paper was delivered to his Commissioners, at another time, viz. upon 4 September 1733.

The foregoing Paper is proved by Messieurs Logan, Preston, Steel and Taylor, and is the Pensilvania Exhibit markt E.

Note.

It comes out in Evidence, that there was one verbal Request, this Day, to meet before Dinner, and another verbal Request to meet, after Dinner, but, those being refused,

1732, Feb. 3.

A signed Notice, by four, of our Commissioners, directed to

the Lord Baltimore's Commissioners; That the Commissioners having agreed to meet at Newcastle, at Ten, or Eleven, o'Clock in the Forenoon of the 3d Instant, but, by reason of Indisposition, a quorum of our Number not appearing at the precise Hour; We do now give you the Commissioners on the part of Maryland Notice, that we will meet you at the Court-house, in this Town of Newcastle, at Six o'Clock this Afternoon. This is proved by Messrs. Logan and Preston, and is the Pensilvania Exhibit B. No. 1.

This produced no Meeting, neither.

Feb. 3.

Another signed Notice, by four of our Commissioners, directed to Mr. Ogle, and which was served (tho' he refused to be seen) upon four others of the Maryland Commissioners, That since you have declined meeting us this Afternoon at the Court-house, pursuant to the Notice given you, we judge it necessary to give you further Notice, that we will continue here till Monday the 5th Currant, in order to meet you at Ten of the Clock in the Forenoon of that Day, at the said Court-house, there jointly to proceed to the Execution of our respective Commissions, which we on our parts have declared ourselves ready to do, as from the Paper signed by us, and this Day delivered by one of our Number into your Hands, may fully and clearly appear. This Paper is spoke to by Messrs. Logan and Preston, and is the Pensilvania Exhibit markt B. No. 2.

Instead of meeting on the Monday, the Maryland Commissioners left the Town, and went back to Maryland, on the Sunday.

Feb. 15.

Is the Date of Lord Baltimore's Letter to the Governor of Pensilvania, reviving the Meetings, and appointing one at Joppa; which we have particularly charged at Fol. 304, in our Bill: and the Defendant has expressly admitted it in Fol. 316. of his Answer, which we must refer to; for we have it not to produce, nor are we bound to produce it, it being my Lord's Letter to Major Gordon, who is proved to be dead.

Notwithstanding that Notice from my Lord Baltimore himself that the Commissioners should meet at Joppa on the 7th of May, we shall see what my Lord himself and his Commissioners did, in Maryland, in the meantime; he himself being then there.

For we have proved by the Reverend Mr. Hugh Jones of Maryland, a Copy of the following Letter which Governor Ogle wrote to him, and which he sent to another Person.

1732, *Mar.* 8.

To the Rev. Mr. Jones in Cecil County, These. Annapolis Mar. 8, 1732. Sir, I send you this, on purpose to desire you not to fail being here at the Meeting of our Assembly, having several Things to communicate to you in relation to his Lordships' Interest, which cannot well be brought into the Compass of a Letter; However, I can't, in the mean time help giving myself the Pleasure of acquainting you that we are not at all sorry at the unreasonable Behaviour of the Commissioners for Pensilvania, in refusing to run out the Circle about Newcastle, as mentioned in their pretended Deed of Feoffment; For, altho' that would be only at about two Miles Distance from Newcastle, yet, it is what I believe, they would be glad to get hereafter; my Lord having. now, the most reasonable Hopes that can be of getting every Inch of the three lower Counties, which are so indisputably his Right. This, to tell you my thoughts freely, will be the greatest Happiness that can be to the present Tenants, however they may have been deceived by artful People; His Lordship being determined to let such of them, as behave well to his Lordship, enjoy the Land they hold. without exacting any Thing of them, either for arrears of Rent, or any other Cause whatsoever besides the ordinary Conditions of Plantations, which you know comes but to a Trifle. I am Sir Your assured Friend and humble Servant Sam. Ogle.

This Letter has the following Underwriting "I attest that this is a true Copy of a Letter lately sent, by Express, from his Excellency the Governor to me. H. Jones.

This Letter has an Endorsement thereon thus "To Mr. Lloyd, "Mar. 17, 1732. Sir, 'Tis a great Satisfaction to me, that my "Lord Baltimore will condescend to the Particulars of this "Letter; I communicate it to you, to shew any of your Friends "that may have any Interest therein, and am, Sir, Your's. H. "Jones.

The foregoing Copy of a Letter is proved by Hugh Jones Clerk of Maryland, and is the Pensilvania Exhibit in a marbled Cover, No. 2.

Note.

This was to draw off our Tenants, while my Lord himself had writ to appoint a new Meeting at Joppa, and the Original hereof was writ by his Governor and first Commissioner Mr. Ogle.

But, lest this should not be quite plain enough, nor quite publick enough, we have also proved the following printed Advertisement.

Mar. 21.

"Annapolis, Mar. 21, 1732. 'By Order' of the Right Honourable the Lord Proprietor. To all Persons whom it may concern, All Takers-up of Land within the Province of Maryland, who may pretend to hold them by virtue of any Grants or Patents, not deriving the same from the present Proprietor or his Ancestors, will be intitled to no Benefit thereby, unless they make speedy Application to Matthew Tilghman Ward Esq; Agent for the Proprietor. Sign'd by Order, John Ross Dep. Agent.

This also is proved by Hugh Jones of Maryland Clerk, and is the Pensylvania Exhibit in a marbled Cover, markt No 1. and was, by my Lord's own Order, posted up on the Borders of the Three lower Counties.

So that, while my Lord, himself, had appointed the new Meetings of the Commissioners at Joppa, and was himself in Maryland, here were written, and printed, Invitations and Threats, to draw of our Tenants, and they were to apply to Mr. Ward, another of my Lord's Commissioners. And these last printed Papers are proved to have been stuck up on the Borders of the Three Lower Counties by my Lord Baltimore's own Orders.

1733, *Mar. 28.*

The Notice signed by all the Pensylvania Commissioners, and served personally upon six of Lord Baltimore's Commissioners in Maryland, viz.

Gentlemen. Five of us, the underwritten Commissioners appointed by virtue of a Commission from the Honourable the Proprietaries of Pensylvania, for executing certain Articles of Agreement concluded between them and the Right Honourable Charles Lord Baltimore, Proprietor of the Province of Maryland, touching the Limits of the said Provinces and Counties of Newcastle, Kent and Sussex on Delaware, having met the like Number of you, the Commissioners appointed by the said Lord Baltimore, at Newcastle, on the first Day of February last, pursuant to our former joint Adjournment, and continued together till the 3d Day of the same Month, when, from a pretended Failure by reason of a Quorum of us not appearing at the precise Hour in the Forenoon of that Day, to which we stood adjourned, you thought fit to withdraw yourselves from the Court-house of the said Town of Newcastle, the Place of our Meeting, and, notwithstanding you, and we, met together, several times, afterwards, in the same Day, yet, insisting on that supposed Failure, you refused, as Commissioners, to join with us, in the Execution of our respective Commissions, by which Refusal.

we were obliged to serve you with Notice to meet us the same Evening, at six o'Clock, at the Court-house of Newcastle aforesaid, which you neglecting to do, we, the same Evening, again, served a Quorum of you (Access being denied us, to others of your Number) with Notices to meet us at the Place aforesaid on Monday, the 5th Day of the said Month; which, likewise, you thought fit so little to regard, that, leaving Newcastle the Day before, you again neglected to meet us at the Time and Place, by the said Notices appointed. But we the underwritten Commissioners, notwithstanding the Disregard shewed to our former Notices, being still willing to proceed on the Business which now lies before the Commissioners jointly, (viz.) the Execution of the second Article of the said Agreement, which follows in these Words. "That there shall be the said Circle, "mentioned in the said Charter for Pensilvania, and Deed of "Bargain and Sale or Feoffment of Newcastle (or so much thereof as is requisite) drawn and markt out at the 12 Miles Distance from the Town of Newcastle, which 12 Miles shall be 12 "English Statute Miles") Do hereby give you, and each of you, Notice, That we, or a sufficient Quorum of us, will attend at the said Town of Newcastle on Delaware (which by the joint Consent of the Commissioners on both Sides, hath been acknowledged to be the only Place proper for beginning the Business immediately before us) on the 16th Day of April next ensuing, there to meet and join with you, agreeable to the Directions of our respective Comuissions, in proceeding to draw and mark out the said Circle accordingly. Given under our Hands at Philadephia the 28th Day of March 1733.

The foregoing Paper is proved by Messrs. Logan and Preston, who signed, and by William Biddle who serv'd it; and is the Pensilvania Exhibit markt B. No. 5.

May 7.

The written Question from the Maryland Commissioners, whether the Pensilvania Commissioners, would run out any Circle, other than at 12 Miles Distance? And the Pensilvania Answer, that they conceived themselves directed to run no other than that in the Articles, which they mention verbatim. This is proved by Messrs. Preston, Logan and Steel, and is exactly as set forth by the Schedule to the Defendant's Answer at Fol. 532, 533. The Original is Pensilvania Exhibit markt Letter H.

May 8.

The Pensilvania Comuissioners written Proposal, and the Maryland Answer of this Date, are set forth in Fol. 536. of the Defendant's Answer. The Originals are proved by Messrs. Logan, Preston and Steele, and are the Pensilvania Exhibit markt I.

May 8.

The Maryland Commissioners written proposal and the Pensilvania Answer, of this Date, are set forth in 540. of the Defendants answer. The Originals are proved by Messrs. Logan, Preston and Steele, and are the Pensilvania Exhibit markt J.

May 9.

The written Minute of Adjournment from Joppa is set forth in the Defendant's Answer, Fol. 545. The Original is proved by Messrs. Logan, Preston and Steel, and is markt K.

May 26.

The written Minute of this Day is set forth in Fol. 550. of the Defendant's Answer. The Original is proved by Messrs. Logan, Preston and Steel, and is markt L.

Aug. 2.

An Order of the King in Council, made upon the Petition of the now Plaintiffs, John, Thomas and Richard Penn. and upon a Report from the Committee of Council dated the 1st of August; taking Notice that they had delivered to the Lords of Trade a Declaration under their Hands and Seals, in the usual Form, for saving the Right claimed by the Crown to the three Lower Counties; whereby his Majesty approved of the said Patrick Gordon to be Deputy-Governor of Pensilvania without Limitation of Time, and of the said Counties during his Pleasure only; provided he qualified himself according to Law, and gave 2000*l.* Security before the Lieutenant-Governor of Virginia for observing the Acts of Trade. This Exhibit is Co. Off. No 27.

NOTE—This Order of Council is also entred in Newcastle Records, No. 11. Fol. 102.

Sept. 3.

The Pensilvania Demand, of this Date, is set forth in the Defendant's Answer Fol. 553. The Original is proved by Messrs. Logan, Preston and Steel, and is Pensilvania Exhibit, Letter M.

Sept. 4.

The Maryland Answer thereto of this Date, is set forth in the Defendant's Answer Fol. 556. The Original is proved by Messrs. Logan, Preston and Steel, and is in Pensilvania Exhibits, Letter N.

Sept. 4.

The Pensilvania Paper of this Date, is set forth in the Defendant's Answer Fol. 562. The Original is proved by the same three, and is in the Pensilvania Exhibits, Letter O.

Sept. 5.

The Maryland Answer of this Date, is set forth in the Defend-

ant's Answer Fol. 588. The Original is proved by the same three, and is in the Pensilvania Exhibits, Letter P.

Sept. 6.

The Pensilvania Categorical Demand, that the others would run the Circle at 12 Miles Distance, or else declare they would not? The Copy is set forth in Defendant's Answer Fol. 584. The Original is proved by the same three, and is in Pensilvania Exhibits, Letter Q.

Sept. 6.

The Maryland Answer thereto, they cannot agree to that Circle. The Copy is set forth in Defendant's Answer Fol. 596. The Original is proved by the same three Persons, and is in Pensilvania Exhibits, Letter S.

Sept. 6.

The Maryland Demand, whether the Pensilvania Commissioners will run no other Circle? The Copy is set forth in Defendant's Answer Fol. 598. The Original is proved by the same three Persons, and is in the Pensilvania Exhibits, Letter R.

Sept. 6.

The Pensilvania Answer, that they can't agree to run any other. The Copy is set forth in the Defendant's Answer Fol. 599. The Original is proved by the same three Persons, and is in the Pensilvania Exhibits, Letter T.

Sept. 6.

The Minute of Adjournment to the 14th of November. The Copy thereof is set forth in the Defendant's Answer Fol. 601. and the Original is proved by the same three Persons, and is in the Pensilvania Exhibits, Letter U.

Nov. 14.

From the Newcastle Records, an Entry recorded there, of a Testimonial given by Mr. Gooch the Lieutenant-Governor of Virginia, under the Great Seal of that Colony, that Colonel Gordon had taken the Oaths, subscribed the Test, took the Oath of Office, and given 2000*l.* Bond to observe the Acts of Trade, before him. Newcastle Records, No 11. Fol. 103.

Nov. 16.

The Maryland Paper of Proposals at Newcastle, to go away to Cape Hinlopen to run the East and West Line there. The Copy is set forth in the Defendant's Answer, Fol. 606, and the Original is proved by Messrs. Logan, Preston and Steel, and is in the Pensilvania Exhibits, Letter W.

Nov. 17.

The Pensilvania long Answer thereto, recapitulating the several Instances of Chicanery which had been used by the Maryland Commissioners. The Copy is set forth in the Defendant's Answer Fol. 609. and the Original is proved by the same three Persons, and is in the Pensilvania Exhibits, Letter X.

Nov. 19.

The Maryland long Answer thereto, pretending that there were no Minutes taken to justify what was therein contained, (which was one of the Objections all along that they refused to let Minutes be taken) and telling them plainly they must either continue at Newcastle without running the Circle, or else depart without Adjournment. The Copy is set forth in the Defendant's Answer, only with some Mistakes in the Copying made by the Clerk, Fol. 635. and the Original is proved by the same three Persons, and is in the Pensilvania Exhibits markt Letter Y.

Nov. 20.

The Pensilvania long Reply thereto is set forth in the Defendant's Answer Fol. 671. The Original thereof is proved by the same three Persons, and is in the Pensilvania Exhibits markt Letter Z.

Nov. 22.

The Maryland Paper then delivered. It is set forth in the Defendant's Answer Fol. 703. And the Original thereof is proved by the same three Persons, and is in the Pensilvania Exhibits markt Letter Z a.

Nov. 23.

The Pensilvania Answer thereto is set forth in the Defendant's Answer Fol. 716. and the Original is proved by the same three Persons, and is in the Pensilvania Exhibits markt Letters Z b.

Nov. 24.

The Parting Minute, signed by the Commissioners on both sides, declaring their Difference in Judgment to be, whether the Circle was to be 2, or 12 Miles distant from Newcastle, and then breaking up without further Adjournment. The full Purport of this is set out in our own Bill Fol. 347. It is again set out, verbatim, at Fol. 338. in the Body of the Defendant's Answer, and also at Fol. 726. in the Schedule to his Answer. The Original is proved by Messrs. Logan and Preston, and is in the Pensilvania Exhibits markt Letters Z c.

Jan. 10.

A Report then made by all the seven Pensilvania Commissioners to their Proprietors, and then signed, and afterwards sworn and affirmed to by them, in Pensilvania, containing in it a Minute Relation of all that had past from day to day, between the Commissioners on both sides, and also containing Copys, at full length of all the foregoing Papers which past, between them; and which Paper (as some of those Commissioners are since dead) we have proved to have been signed and sworn to by all the seven Commissioners, by Messrs. Logan, Preston, Hamilton and Graeme. It is, of itself, a large Book, under the Great Seal of Pensilvania, markt A.

But as others of the Commissioners are still living, and have, in this Cause, given Evidence to the same Facts, and proved the Copies of the same Papers exchanged between the Commissioner on each side, I would not again incumber you with that Heap of Matter.

Only this, That in Fol. 26. and 27. of this Report, they have inserted the Body of my Lord Baltimore's Letter of 15 Feb. to revive the Meetings of the Commissioners, and appointing the Meeting at Joppa for the 7th of May, of which at present we have no other Copy.

CHAP. XV. *From Christmas 1733, to the Time of filing the present Bill in June 1735.*

1734, Aug. 8.

The now Defendant's Petition to the King in Council, wherein he states the Charter for Maryland, and that his Ancestors, pursuant to the Design of the said Charter, with great Charge and Difficulty proceeded to cultivate and settle such Part of the Country so granted, as the Nature thereof would admit, intending, by Degrees, to make a compleat Settlement of the whole. "That it appears by an Order of Council of the 4th of "April 1638, that Captain William Clayborne, on the Behalf of "himself and Partners, having presented a Petition to his late "Majesty, King Charles the First, shewing that, by a Commission from his Majesty, they had planted upon an Island in "the Great Bay of Chesapeake in Virginia, named the Isle of "Kent, and others Places therein mentioned, and bestowed "great Charges thereon, and that the Lord Baltimore had obtained a Patent from his said Majesty, comprehending the "said Island and Places, within the Limits thereof, they thereby "prayed a Grant of Confirmation of the said Island and "Places to the said Petitioners; and the Matter of the said

"Petition being referred to the then Lord Archbishop of Canterbury, the Lord Keeper, Lord Privy Seal, and others, and it appearing that the said Isle of Kent was within the said Lord Baltimore's Patent, and it appearing also, by an Order of Council of the 3d of July 1633, that the Right and Title to the said Isle of Kent, and other Places in Question, had been resolved and declared absolutely to belong to the Lord Baltimore, their Lordships declared, that no Grant should pass to the said Clayborne or any others of the said Isle of Kent, "or other Places within the said Patent." That the Petitioner conceives, from the said Order of Council, and from the Body of the Patent, (which hath no restrictive Words of *hactenus inculta*) that all Lands, within the Limits of the said Patent, did pass to the Lord Baltimore; but finds that, pursuant to an Order of Council dated the 31st May 1683, the Lords of the Committee for Trade and Plantations, amongst other Things, reported that the Land intended to be granted by the Lord Baltimore's Patent, was only Land uncultivated and inhabited by Savages, and that Part of the said Land called Delaware was inhabited by Christians, at and before the Date of the Patent, [Here, in pretending to set out this Order, he only leaves out these essential Words, viz. As it hath been ever since to this Time, and continued as a distinct Colony from that of Maryland] and were, therefore, of Opinion that the Tract of Land lying between the River and the Eastern Sea on the one Side, and Chesapeake Bay on the other, should be divide into equal Parts, by a Line from the Latitude of Cape Hinlopen to the 40th Degree of Northern Latitude, and that one Half thereof, lying towards the Bay of Delaware and the Eastern Sea, should be adjudged to belong to his then Majesty, and that the other Half should remain to the Lord Baltimore, as comprized within his Charter, which was accordingly ordered by his said Majesty King James the Second by Order of Council of 7th November 1685. But the Petitioner shews, that if any Part of the said Tract of Land mentioned in the said Report was inhabited at the Time of the said Patent, by any Christians, yet, they were not Subjects of the Crown of England, but Swedes and Dutchmen, or the Subjects of Foreign Nations. That, as the whole of that Part of the said Peninsula is plainly described within the Limits of the said Grant to the Petitioners's said Ancestors under whom he claims, so he conceives the same was intended to pass, and did pass, by the said Charter: in regard the chief Design thereof was to enlarge and extend the English Empire and Dominion, and, therefore, in the Body of the said Charter all that Part of the said Peninsula, comprized within the Limits therein delineated, is granted, without any Qualification or Restriction.

tion, of the said Words *hactenus inculta* mentioned in the Recital of the said Charter. That, altho' the said Order of King James cannot legally infringe the Rights of the said Charter, yet, the same may hereafter create Doubts, and occasion the Petitioner's Right, to the Lands therein mentioned to be drawn in question, and thereby create great Expence to the Petitioner; but the Petitioner prays the King not to interpret the said Words *hactenus inculta*, in a Sense exclusive of any Part of the said Peninsula lying within the Limits of the said Charter, altho' some very small Parts thereof should, at the Date thereof, happen to have been inhabited by the Subjects of Foreign Powers; and that, in regard the Petitioner's Ancestors had been at great Expence and Hazard, to settle and plant that Part of the said Peninsula, described within the Limits of the said Charter, and to extend the Empire and Dominion of the Crown of England, agreeable to the Royal Intention, as expressed in the said Charter. He prays that the King would, by a further Charter or Letters Patent, confirm unto him and his Heirs and Assigns the whole of such Part of the said Peninsula as is contained within the Limits of the said Charter, notwithstanding the said Words of *hactenus inculta*, in the Recital of the said former Charter or Letters Patent inserted. Co. Off. No. 28.

Note.

You'll observe there is not a Syllable of Mention made in this Petition of the Province of Pensilvania, or of the Proprietors of it, or of the three lower Counties, (which are not once named) or of the long Possession and Improvement made thereon, or of the Articles of Agreement which he had entred into; but he, by this Petition, presented in a few Days after a Second of the Plaintiffs was gone abroad, falsely sets up the pretended forged Order of 4 April 1638, drops every material word in the Final Order made in 1685. and petitions, behind the Plaintiffs Backs, upon these Falsehoods and gross Concealments, for a Grant to himself of those three lower Counties which he had already conveyed and covenanted to make further Assurance of to the Plaintiffs; and, their Interest whereto, he had covenanted to support and assist, by all the Means in his Power. But this is like every other Part of his Proceedings.

1734, Aug. 8.

By Order in Council the foregoing Petition was referred to the Lords of Trade to examine the Matters and Facts contained therein, and report the same, together with their Opinion, thereupon, to his Majesty. Co. Off. No. 29

When this Petition was presented Mr. John Penn was, a few

Days before only, gone to Pensilvania; Mr. Thomas Penn the second Brother, had been there constantly for two Years before, immediately after executing the Agreement; and there was none of them in Europe but Mr. Richard Penn, the youngest Brother, who was but just come of Age, and knew nothing of the Matter.

There was no Notice of this Petition given, even to him, but the Lords of Trade by their Secretary, sent a Sort of Notice of this Petition to Mr. Paris, who on the 17th of October brought him down to the Lords of Trade.

Dec. 19.

The now Plaintiff Richard Penn presented a Petition to the King in Council in behalf of himself and his two elder Brothers, then in Pensilvania setting forth what the former Lord Baltimore had petitioned for, and the Crown had granted to him, in 1632; That that Province of Maryland was evidently known to produce to the Lord Baltimore a very great yearly Profit, and was, by much, the most beneficial Grant in any Subject's Hands in America; That at, and long before, the Grant to Lord Baltimore, the Eastern Side of the Peninsula had been possest, and was held, by the Swedes and Dutch, as had been manifested and determined by many Orders, made after the fullest Hearings and Examinations in Council; and those Lands were, long after that Grant, taken, and afterwards confirmed by Treaties, from the Dutch; That on 4 March 1680, King Charles made the Grant of Pensilvania; and in 1682, the Duke of York conveyed the three lower Counties, which lay contiguous to Pensilvania, and on the Eastern Side of the said Peninsula, to the Petitioner's Father, with Covenants for further Assurance; and the Duke had, for a long time, been in full Possession of the same under Grants from the Crown; and had exercised, by his Officers, all Sorts of Acts of Ownership, Proprietorship and Government therein; That there had been, soon after those last Grants, such a Contest in 1683, 84 and 85, and such Determination made; which Order of 1685 the Lord Baltimore had, several Times since, petitioned against; suggesting that it had been made *ex parte*, or that he had not been heard thereto; but, upon Examinations into such Suggestions, they likewise have been declared to be untrue, and the said Order has thereupon been repeatedly confirmed by subsequent Orders in Council in 1708 and 1709. That the Lord Baltimore hath greatly extended his true Bounds, Northwards, beyond the Beginning of the 40th Degree, as known and understood at the Time of his Grant, but nevertheless, the same do not extend to include the 3 lower Counties, nor do include above a very small Part of one of the said Counties. That, after the said Order in Council was made,

the Petitioner's Father, fairly and for valuable Considerations, purchased the Lands, which had been so granted to him as aforesaid, from the Indian Natives in those Parts, and sold great Parts of his Family Inheritance, in England and Ireland, (which is of above 1500*l.* a Year) and has constantly possess and cleared, settled, peopled and cultivated these Tracts, so granted him; insomuch, and to so great a Degree, that the same, altogether, make, without Exception, the most flourishing Colony in America for its Age; the Number of Inhabitants in the 3 lower Counties only, being at least 70,000 Souls. That the Petitioner's Father, had done this, in the Space of about 50 Years, without one Penny Charge to the Crown or Publick, and at his own sole, but very great, Expence; having been forced, in order to accomplish the same, to mortgage the very Lands granted to him, besides selling his Family Estate, and to contract other great Debts, many of which are to this Hour unpaid, and for some of which he lay in Prison a considerable Time; and the Petitioner's Father, or his Family, have never received any Sort of Benefit to themselves, from this Grant, nor from his Father's great Labours, Toil, Hazard, and Expence, but are, as yet, many Thousands of Pounds the worse for the same. That as the Bounds between Maryland and the 3 lower Counties had not been exactly delineated and marked out, neither the Petitioners Father, nor themselves, have been able to raise or receive the Quit Rents out of the lower Counties, the Lord Baltimore still making some Pretensions to Land there, whereby the Petitioners have been hindered from making even further Improvements, and also from receiving some small Fruit and Benefit from this great Undertaking. That in 1731. the present Lord Baltimore drew out, with his own Hand, and offered to the Petitioners his own Proposals for an Agreement, in order to accomodate all Differences, and to settle the Bounds between Maryland and Pensilvania, and the three lower Counties; the first Clause whereof was in the Words following, "There shall be a Circle of 12 Miles Distance drawn from New-castle." That the said Lord Baltimore, by those Proposals, insisted to extend and stretch his Country, on the North Part, towards and into the Province of Pensilvania; and, on the East Part, towards the 3 lower Counties also, in a manner to which the Petitioners conceived he was no way intitled; but, to put an end to all manner of Differences and Disputes, and that the Petitioners might begin to reap some small benefit, they agreed to every one of Lord Baltimore's own Proposals in the manner he himself had offered them. And his own Plan of the Country in Question was engraved by his own Mathematician, and was printed on the side of the Articles of Agree-

ment; which Articles were, during 10 Month's Time, under the Consideration of his own Counsel, Mathematician, Solicitor, and other Agents, and were at last executed by the Lord Baltimore and the Petitioners on the 10th of May 1732. That those Articles contained the fullest, plainest and clearest Directions for the actual running and marking out the dividing Lines, and also contained Renunciations and Releases, in Fee, from each of the Parties, to the other, of the Lands on the respective sides of the dividing Lines (which Lines were markt out on the Map in the very Margin of the Articles) and of all their Claims and Interests therein and thereto, and more particularly the Lord Baltimore himself conveyed thereby, to the Petitioners, the said three lower Counties; and one particular Clause was comprised in the said Instruments, in the following express Terms "That there shall be the said Circle, mentioned "in the said Charter for Pensilvania, and Deed of Bargain and "Sale or Feoffment of Newcastle, or so much thereof as is requisite, drawn and markt out at the 12 Miles Distance from "the Town of Newcastle, which 12 Miles shall be 12 English "Statute Miles." And the Lord Baltimore covenanted for further Assurance and that he would use all friendly Means and Offices, to the utmost of his Power, to assist and support that Agreement, and the Rights, Interests and Pretentions of the Petitioners by virtue thereof. That the Petitioners had good reason to hope, when they had concluded that Agreement with the Lord Baltimore, at his own Request, and upon his own Terms also, that they should have enjoyed the Benefit of so much Labour and Expence, And the Lord Baltimore and the Petitioners executed Commissions, to 7 Commissioners of each side, to mark and run out the Lines, described and mentioned in the Articles. And the Petitioner Thomas Penn went to Pensilvania, and, some time after, the Lord Baltimore went to the Province of Maryland. That, before his Lordship's Arrival there, the Commissioners, on both sides, had had several Meetings to run out the Lines, and the first thing in course to be done, and the first thing directed by the Articles to be Performed, being to mark out the Circle round the Town of Newcastle, the Lord Baltimore's Commissioners, most surprisingly, insisted to run a Circle not 12 Miles distant from Newcastle, as was agreed in express Terms, but something less than 2 Miles distant therefrom, declaring that they understood the Articles to mean a Circle whose Periphery was only 12 Miles, the Diameter of which would be less than 4, and consequently it could not be 12 Miles distant, but something less than two Miles distant, from Newcastle; nor would they seem to understand the Words of the Articles in any other sense, unless the Lord Baltimore

himself should certify them to the contrary. That, as his Lordship was expected in Maryland in some few Months, the Petitioners Commissioners readily agreed to adjourn the Proceeding till he should arrive, that he might explain to his own Commissioners whether the Words of the Articles [of 12 Miles Distance from the Town] meant only two Miles Distance, or not; not in the least doubting but his Lordship, who had so earnestly pressed and obtained that Agreement from the Petitioners, would have instantly set his Commissioners right in their pretended Misapprehension. But, after his Lordship's Arrival, his Commissioners still refused to mark out any other Circle than that they had so contended for, although his Lordship was several Months in Maryland during their Meetings, and thereupon the Lines were not actually markt out, which was occasioned purely and simply by the Misapprehension, or pretended Misapprehension, of the Lord Baltimore's Commissioners, of those plain words, and not from any other Cause whatever.—That the Lord Baltimore returned to England, and the Petitioner John Penn had occasion to go to Pensilvania, (the Petitioners' Affairs there being in a very indifferent Scituation, for want of the said Lines being run out. That, in a very short time after that the said John Penn (who is the eldest brother, and had all the Papers relating to this affair in his Custody, and had been most conversant therein) was gone for Pensilvania, the Lord Baltimore presented a Petition to his Majesty on the 8th of August last, without so much as naming, or taking the least notice of the Petitioners, or of his own solemn Agreement and Conveyance, but setting forth the Grant in 1632, and setting forth some other Matters relating to an Island called Kent (which no manner of way relate to the matter in Question) and partially reciting the Order of Council of November 1685, and containing an Allegation, that, if any Part of the Tract mentioned in that Order was inhabited at the time of the Grant to the Lord Baltimore, by any Christians (which the Petitioner seems to doubt, tho' so clearly and fully established) yet, that they were not Subjects of England, but of Foreign Nation, and therefore, as the whole Description of that Part of the Peninsula, in the granting Part of the Patent, did not, a second time, contain the Qualification or Restriction of *Hæreticus incultus* mentioned in the Recital of the Patent, he, by his Petition, behind the Petitioners Backs, prayed that his Majesty would, by a further Charter, confirm to him the said Lord Baltimore his Heirs and Assigns, the whole of such Part of the Peninsula as was contained within the Limits of the said Charter, notwithstanding the Restriction in the Recital; Thereby, as the Lord Baltimore expects, and has in explicit Terms ac-

knowledged, to make a subsequent Grant to Lord Baltimore of these very Lands which he had so lately, and after so much Advisement, conveyed to the Petitioners, which is what the Petitioners could not have expected. That, throughout the Lord Baltimore's whole Petition, there's nothing which informs his Majesty of the Length of the Petitioners Possession, of the very great Improvements made by their Father (to his own and Family's Ruin) of the Agreement so solemnly and so lately entred into between the Lord Baltimore and the Petitioners, or of the Conveyance which himself had so lately made to the Petitioners of the three lower Counties (and which Matters the Petitioners conceive might have been very proper for his Majesty's Information) but, on the contrary, every thing tending thereto is dropt and concealed, and upon the Face of that Petition it might seem as if the Lord Baltimore was petitioning his Majesty only for some small trilling Tract of Land, which was neither claimed, possest or improved by any Person in the World. That his Majesty having been pleased to refer the said Petition to the Consideration of the Lords for Trade, their Lordships, in the Course of their Office knew of the Petitioners Possession and Claim, and from their great Justice it was, that the Petitioner Richard Penn received (about the 17th of October 1734) the first notice that any such Petition was depending. That the said Petitioner, without the most material Papers, or any Instructions, having lost the Assistance of his former Counsel, did get a new Counsel, who had never been acquainted with this very intricate Affair, to attend the Lords for Trade and Plantations upon the 21st of October last, when a first Hearing was had, and another appointed for the 20th Day of December now next, at which former Hearing it was insisted by the Lord Baltimore's Counsel, that if your Petitioners should not shew a clear legal Title to the Lands prayed for, that your Majesty might be advised to make a Grant now, as prayed, to the Lord Baltimore, which (as was pretended) could not invalidate the Right of your Petitioners, if any they had; but the Petitioners humbly apprehend, that such a Grant might create very great Disorders and Inconveniencies, and would raise the greatest Trouble and Disputes imaginable, and the rather from the Difficulty of settling a proper Jurisdiction in that Country to try the Rights of the Parties. That the Petitioner Richard Penn is interested but a small matter, in proportion to his two elder Brothers, in the Lands in question, and they, alone, have always had the Custody of the Deeds and Papers relating to this Dispute (which has depended now above 50 Years, but which it was hoped was ended by the Agreement in 1732) and have had the Management of the Affair; and the

present Petitioner has not intermeddled, or been acquainted therewith, and is therefore in a most defenceless State, now in their Absence. That the Petitioners Interests, and also those of all the Inhabitants in the three lower Counties, who hold by Titles derived from the Petitioners Father, and who have laid out their whole Substance in improving particular Parcels there, would be affected, by granting the Prayer of the Lord Baltimore's Petition, and the Petitioner prays Leave to inform his Majesty, that many Thousands of the Inhabitants in the said lower Counties are of the People called Quakers, who have ever behaved as loyal and faithful Subjects, and who, or their Ancestors, retired thither to settle in a Place where they have ever enjoyed Freedom of Conscience, and who might be deeply affected, in their Temporal and Religious Rights, both, if now to be put under another Government. That, from the first Notice the Petitioner Richard Penn hath had of the Lord Baltimore's Petition, no Opportunity (in regard of the Season of the Year) hath offered, of informing the two other Brothers in Pensilvania thereof. That his Majesty has not hitherto been strict upon his Subjects Titles in America, where a long Possession and real Improvement has been made, and the Petitioners hoped, that their very long Possession, and very great Improvement, added to the good Title they have will induce his Majesty to quiet them in their Possession. Therefore pray, that they may not, upon the Petition of the Lord Baltimore, be drawn (especially at so great a Surprise, and in such an uncommon Case) to set forth their Right to their antient Possession, and that his Majesty would not be pleased, at the Lord Baltimore's Request, who has so lately conveyed these Lands to the Petitioners, to strip the Petitioners (who have not hitherto received any Benefit from the said Grant) to give the Fruit of their great Labour. Hazard and Expence, to the Lord Baltimore (who has already so very beneficial a Grant) and that his Majesty will not be pleased to grant the Prayer of the said Lord Baltimore's Petition, but to dismiss the same, and to confirm the Petitioners Possession and Title, agreeable to the Limits in the said Deeds of May 1732, between the Lord Baltimore and the Petitioners, and to indulge the Petitioners with a reasonable Time to be heard hereon, and to grant the Petitioners all other Relief in the Premises. Co. Off. No. 30.

1734, Dec. 19.

By Order in Council, made upon reading this Petition, it was referred to the Lords of the Committee of Council to consider the same, and report their Opinion thereupon to his Majesty. Co. Off. No. 31.

It is very true, that we did try to get our foregoing Petition also referred down to the Lords of Trade; but, as it came in so late, the Lords of the Council would not refer it thither; Wherefore, and as the younger Brother, in truth, knew nothing of this old Affair, we resolved to let the Board of Trade (whose Inclinations we could very well guess at) make their Report *ex parte*, upon my Lord Baltimore's Petition: And accordingly, they made just such a Report thereon as was expected.

Jan. 16.

Report from the Lords of Trade to the King, That they had considered Lord Baltimore's Petition, and acquaint his Majesty, that the Lands in Question, commonly called the three lower Counties on Delaware River, supposed to be excepted by the Words *Hactenus inculta*, appear to them to be included in the Limits granted by King Charles the First to the Lord Baltimore's Ancestors. but they have been in the Possession of the Penn Family for several Years, which made it proper for us to communicate the Purport of Lord Baltimore's Petition, and of his Majesty's Order thereupon, to the Agent for Messieurs John. Thomas and Richard Penn the present Proprietors of Pensilvania, that they might have an Opportunity of laying before us what they should think proper in relation to this Petition, and to their Title to the said Lands.* And we have been frequently attended by the said Agent, and by Mr. Richard Penn, one of the said Proprietors, upon this Subject, who promised, from time to time, to lay an Account of their Title before us; but, after having kept us in Expectation thereof, for several Months, they, at last, refused to proceed therein, whereby we are disabled from offering anything to your Majesty, relating to their Claim, except what we find by our Books, namely, that, for sometimes past, when any of their Family, Proprietors of Pensilvania, have nominated a Person for the Approbation of the Crown to be Deputy Governor of that Province, and of the said three lower Counties, they have given Declarations, under their Hands and Seals, which are extant in our Office from the Year 1702, to the last Nomination in 1733, whereby they acknowledge and agree that the said Approbation and Allowance shall not be construed in any manner to diminish or set aside the Right claimed by the Crown to the said three lower Counties. Upon their Refusal to proceed herein, we thought it our Duty to examine the Facts set forth in the Lord

*Mr. Paris, in fact, was not Agent for Mr. Penns, nor Solicitor for them, neither; though the Lords of Trade called him so, to warrant their own Proceeding without sending any Copy of the Petition to the Persons it really concerned.

Baltimore's Petition, and the Equity alledged by him as a Ground for his Hopes of your Majesty's favour in this Case. Whereupon we beg leave to acquaint your Majesty, that we find the Lord Baltimore's Original Patent bears Date the 20th of June 1632 and there is no room to doubt, that the Lands in Question are comprised within the Limits described in that Grant. And, with regard to the Interpretation of the Words *Hactenus inculta*, we have examined the antient Records of our Office,† and find by an Order of Council dated the 4th of April 1638, which recites the Purport of a former Order dated the 3d of July 1633, that one Captain William Claybourne having, in behalf of himself and Partners, set forth in a Petition to the King, that divers Years past they had discovered and planted upon an Island in the great Bay of Chesapeak in Virginia, which they had named the Isle of Kent, and that they had likewise settled another Plantation, upon the Mouth of a River, at the bottom of the said Bay in the Sasquehannaugh Country, and that the Lord Baltimore, taking notice of the great Benefit that was likely to arise to them thereby, had obtained a Patent from his Majesty, comprehending the said Island within the Limits thereof; upon which he besought his Majesty to grant him a Patent, under the Great Seal, for the quiet keeping, enjoying and governing of the said Island, Plantations, and People, &c. Whereupon all the Parties having been fully heard, we find the Sense of the Council expressed in the following Words, "That, upon what then appeared to them, and also "upon Consideration of a former Order of that Board, dated "July 3d 1633, wherein it appeared that the Difference now in "Question, being then controverted, the Lord Baltimore was "left to the Right of his Patent, and the Petitioners to the "Course of Law, their Lordships, having resolved and declared "as abovesaid, the Right and Title to the said Isle of Kent and "other Places in Question to be absolutely belonging to the "Lord Baltimore, and that no Plantation or Trade with the "Indians ought to be, within the Precincts of his Patent, without Licence from him, did, therefore, likewise think fit and "declare, that no Grant from his Majesty should pass to the "said Cleyborn, or any others, of the said Isle of Kent, or other "Parts or Places within the said Patent, whereof his Majesty's "Attorney and Sollicitor General are hereby prayed to take "notice." But we find that, upon a Dispute, betwixt the Lord Baltimore and the Duke of York (for whom Mr. William Penn was then Agent) concerning a Tract of Land in America, com-

†They have no Record, nothing but an unauthentick Copy, of this pretended Order.

monly called Delaware, wherein we conceive the said three lower Counties to be comprized, the Lords of the Committee for Trade and Plantations reported their Opinion, in May 1683, that the Land intended to be granted by the Lord Baltimore's Patent, was only Land uncultivated and inhabited by Savages, and that the Land, then in Dispute, was inhabited and planted by Christians, at and before the Date of Lord Baltimore's Patent,* whereupon they proposed that the Land, lying between the River and Bay of Delaware, and the Eastern Sea, on the one side, and the Chesapeak, on the other, should be divided into two equal Parts, by a Line from the Latitude of Cape Hinlopen, to the 40th Degree of Northern Latitude, and that one half thereof, lying towards the Bay of Delaware and the Eastern Sea, be adjudged to belong to his Majesty, and the other half to the Lord Baltimore, as comprized within his Charter. Soon after King James the Second's Accession to the Crown, that is to say, in 1685, this Report was ordered to be carried into Execution, and was confirmed by the late Queen in 1709. Whereupon, as the Sense of the Crown and the Lords of the Council, in these several Decisions, seems to have been governed by the Acceptation of the Purport of the Words *Hactenus inculta*, we beg leave to observe to your Majesty, that notwithstanding these Words are in the Preamble, yet they are not inserted by way of Restriction in the Body or Granting Part of Lord Baltimore's Charter, and as the Authorities seem to us to be equal with regard to the Interpretation hitherto given them, we must humbly submit it to your Majesty, whether the Sense in which they were understood by the Privy Council in 1633 and 1638, being so soon after the Date of Lord Baltimore's Patent, when the real Intention of the Crown in that Grant might have been more clearly known to the Lords of the Council, or the later Decision thereupon, when this Matter was again made the Subject of an Enquiry in Council, so long afterwards as 1683, and 1685, should have the Preference?† Thus much hath occurred to us upon the Subject of Lord Baltimore's Pretensions to the Lands petitioned for, and we cannot enter into any Examination of the Claim of the Penn Family, because they have declined to proceed therein before us. But, if it should be determined that the Right to the Lands in Question still remains in the Crown, we humbly beg leave to offer our Opinion, that the Lord Baltimore hath very just Pretensions to your Majesty's Favour, in Consideration of the great Sums of Money that have been expended by his Ancestors, in settling the Prov-

*Here they drop the very Heart and Essence of the real Order.

†Balancing a Fiction in 1638, against a most solemn Reality in 1685.

ince of Maryland, and in bringing the Cultivation of Tobacco to Perfection there, whereby the Trade and Revenue of this Kingdom have gained, and do daily receive very great Augmentations. But to whomsoever your Majesty shall be pleased to grant the said Lands, if still remaining in the Crown, in our humble Opinion proper Care should be taken to preserve the Inhabitants settled there, in the full Possession of all their Religious and Civil Rights. All which is most humbly submitted. Co. Off. No. 32.

1735, May 10.

A Report from the Committee of Council, made upon considering the Report made by the Lords of Trade, upon the Petition of Charles Lord Baltimore, praying for a Grant of Confirmation of such Part of a Peninsula in America, as is contained within the Limits of the Charter, granted to his Ancestor, in the Reign of King Charles the First, notwithstanding the Words *Hactenus inculta*. which are inserted in the Recital of the said Charter; and also made, upon two Petitions, the one in the Name of Richard Penn Esq; the youngest surviving Son of William Penn Esq; deceased, in Behalf of himself and his two elder Brothers John and Thomas Penn Esqs; now in Pensilvania, setting forth their Right to the three Lower Counties of Newcastle, Kent and Sussex, lying within, and contiguous to, the said Peninsula, and therefore praying to be heard against the confirming the said Peninsula, to the Lord Baltimore; And the other, in the Name of the People called Quakers, in behalf of several Thousand Families of Quakers; Inhabitants of the said three Lower Counties, praying also to be heard against the confirming the said Lands to the Lord Baltimore: The Lords of the Committee, this Day, took the said Report and Petitions into their Consideration, and were attended by Council, as well for the Lord Baltimore, as the other Petitioners, and it appearing that on the 10th of May 1732, Articles of Agreement had been entred into, between the Lord Baltimore and the said John, Thomas and Richard Penn, for adjusting the Boundaries of the Lands granted to them, by their respective Charters, which Articles had not been carried into execution, within the Time thereby limited, But, notwithstanding such Lapse of Time, the Validity of the said Articles being insisted on, by and on behalf of the said John, Thomas and Richard Penn. The Lords of the Committee do agree humbly to report to your Majesty, as their Opinion, that the Consideration of the said Report and Petitions should be adjourned, until the End of Michaelmas Term next, in order to give an Opportunity to the said John, Thomas, and Richard Penn, to proceed in a

Court of Equity, to obtain Relief upon the said Articles of Agreement, so insisted upon by them, according as they shall be advised; and that after the expiration of the said Time, either Party should be at liberty to apply to the Committee of Council for Plantation Affairs, as the Nature of the Case may require. Co. Off. No. 33.

May 16.

An Order of the King in Council approving the said Report and ordering that the Consideration of the said Report and Petitions, be adjourned, until the End of Michaelmas Term next, that the said John, Thomas and Richard Penn may have an Opportunity to proceed in a Court of Equity, to obtain Relief upon the said Articles so insisted upon by them, according as they shall be advised; And his Majesty doth hereby further order, that after the Expiration of the said Time, either Party be at liberty to apply, to the Committee of Council for Plantation Affairs, as the Nature of the Case may require. Whereof all Persons whom it may concern are to take notice, and govern themselves accordingly. Co. Off. No. 33.

June 21.

The now Plaintiffs did, in pursuance of the last Order, file their present Bill against the Defendant.

CHAP. XVI. *Of Matters which have past since the Filing our present Bill.*

June 24.

By Indenture of Release Samuel Preston and James Logan, the two Survivors of the Twelve Trustees to whom Proprietary Penn had by his Will devised all his Lands in America upon Trust, conveyed unto John Penn and Thomas Penn and their Heirs, all the Lands, &c. in Pensilvania and in the three lower Counties, &c. To hold one Moyety thereof to the Use of John Penn in Fee, To hold one Quarter part to the Use of Thomas Penn in Fee, and to hold the other Quarter part to the Use of Richard Penn in Fee. Parchment Deed proved by Daniel Flexney.

1737. *March 26.*

By Indenture of Release enrolled in Chancery, Alexander Forbes and William Penn the Grandson, conveyed the Mortgage which had been made to the said William Penn of Pensilvania, for securing the 5000*l.* and Interest, unto Thomas Jackson in Fee. Parchment Deed proved by Paris.

March 26.

By a Declaration of Trust enrolled in Chancery dated the

same Day, Thomas Jackson declared that one Moyety of the Money, paid to buy up that Mortgage, was the Money of John Penn, and that the said John Penn was interested one Moyety in that Conveyance from Forbes and William Penn, and should have a Conveyance thereof. Parchment Deed proved by Paris,

March 28.

An Entry of the Commission granted by John, Thomas and Richard Penn to Colonel George Thomas to be Deputy Governor of Pensilvania and the three Lower Counties in. Newcastle Records, No. 11. Fol. 104.

April 21.

The now Defendant presented a Petition to the King in Council, setting forth his Charter, and that he was indisputably intitled to the Tract called Maryland, and likewise to another Tract called the three Lower Counties, which lye contiguous to Maryland on one side, and to Pensilvania on the other but are really (as he said) within the Bounds of his Charter, and therefore he apprehends they are Part of his Province, and as such belonging to him. That in King James the Second's Time, Advantage was taken of the Expression *Hactenus inculta* and, under that Suggestion, the Crown took the three Lower Counties into their own Possession; That the said three Lower Counties, being then incapable to support a separate Governor, and the Petitioners Ancestors being soon after under some legal Disabilities [Roman Catholicks] the Crown permitted the same Person who was Governor of Pensilvania to act as Governor likewise over the three Lower Counties; but, to evidence that this was not done as considering them as Part of Pensilvania, the Proprietors have, always, signed a Declaration that it should not prejudice the Right claimed by the Crown to the said three Lower Counties; [He forgets that we held the Government the first twenty Years without any such Declaration.] That the People of Pensilvania, in settling, have made great Ineroachments on Maryland; To prevent which he, in 1723, made such an Agreement; but they still made Eneroachments; to prevent which, he, in 1732, on the Application and Request of the Proprietors of Pensilvania, entred into another Agreement with them; but that Agreement was to be void if the Lines were not run by 25 December 1733; which Time being expired, and the Lines not run, he's advised the said Agreement is null and void; That he has since found he was most grossly deceived and imposed upon, by the Proprietors of Pensilvania, in making that Agreement: insomuch that, if it had not been void by Lapse of Time, he's advised he should have been relieved against the

same, on the Head of Fraud and Imposition; That he presented a former Petition, to have a confirmatory Grant of the three Lower Counties, and that Petition having been referred to the Lords of Trade, and they having reported thereon, and that Report coming on to be heard, together with another Petition on the part of the Pensilvania Proprietors, and they insisting on the said Agreement, as subsisting and in full force, the Lords suspended proceeding on his Petition, till the Validity of the Articles should be determined, on such Bill to be brought by the Proprietors of Pensilvania, and a Bill has been accordingly filed, for a specifick Performance of the Articles, and is now depending. 1. That, during this Dispute, the Sheriff of Pensilvania with 40 Men in Arms entred the Province of Maryland, and attackt and took Prisoner Captain Thomas Cressap, one of his Tenants, in Cressap's own House, and carried him Prisoner to Pensilvania. [Note this Fellow had murdered several Persons, was got up very far North in the Country, and, to screen himself, said he was there in Maryland, and he was under Lord Baltimore's Jurisdiction, and my Lord thought proper to patronize and support the Fellow.] 2. That the Proprietors of Pensilvania had lately petitioned his Majesty to approve of Colonel Thomas to be Deputy Governor of Pensilvania and the said three Counties; That he had no Objections to Colonel Thomas's Person, but as the Proprietors of Pensilvania had acted so, in regard to Captain Cressap, and had no legal Right or Title to the said three lower Counties, He prayed two several things, (which were, at several and distinct times, considered) viz. That no Person should be appointed Deputy Governor of the lower Counties upon the Recommendation of the Proprietors of Pensilvania, but that, until the Dispute between them and him touching the Validity of the Articles should be determined, some indiffernt Person might be appointed to have the Command over the said three lower Counties, by Commission from the King, or, at least, that Colonel Thomas, if to be appointed Governor of the three lower Counties, should be so appointed by Commission directly from his Majesty, and not by Commission from the Pensilvania Proprietors. And he likewise prayed that Directions might be given for quieting the Possessions, on either side, near the Boundaries, till the Matters in Dispute should be adjusted here at home. Co. Off. No. 34.

1737. *April 21.*

By Order in Council that Petition was referred to the Lords of the Committee of Council, to consider the same, and report their Opinion thereupon to his Majesty. Co. Off. No. 35.

May 5.

By an Order, made by the Lords of the Committee, upon reading a Report from the Lords of Trade, which was made upon a Petition of the now Plaintiffs, praying the King's Approbation of Colonel Thomas to be Deputy Governor of Pensilvania and the three lower Counties, and, upon considering Lord Baltimore's Petition referred to the Committee the 21st of April last, the Lords ordered that the said Report should be referred back to the Board of Trade, together with Lord Baltimore's said Petition, who were to examine into the whole Matter, and report their Opinion thereupon to the Committee. And whereas there was also laid before the Committee a Reference of the 17th of March last, of another Petition from the President, Council and Assembly of Pensilvania, complaining of several Acts of Violence done, by Persons acting under Lord Baltimore, against the People of Pensilvania, together with my Lord Baltimore's Answer thereto, and several Papers accompanying the same, their Lordships likewise ordered that all those Papers should be transmitted to the Lords of Trade, that they might examine into the same, at the same time as they should consider of the other Matters above referred to them. if they thought fit: in which case they were likewise to report their Opinion thereupon, to the Committee, otherwise, to re-transmit the said Papers. Co. Off. No. 36.

June 3.

A Report from the Lords of Trade that they had read all the Papers referred to them, and had heard my Lord Baltimore and Mr. Penns, by their Council, what they had to offer, with regard to the Appointment of Colonel Thomas by the Proprietors of Pensilvania, for the Government of Pensilvania, and the three lower Counties; upon which they report, "That from the Time that the Province of Pensilvania, and the 3 lower Counties were possess'd by the late William Penn, they have been governed either by the Proprietor, or by Deputies appointed by him and his Successors with the Approbation of the Crown; and upon every Appointment of a Deputy Governor the Proprietors have constantly signed an Instrument declaring under their Hands and Seals that his Majesty's Approbation and Allowance of the Deputies so appointed by them for the Government of the 3 lower Counties shall not be construed in any manner to diminish or set aside the Right claimed by the Crown to the said 3 lower Counties*; what this Right claimed by the Crown is, as also the Claim made by

*This is true from 1702 to this time; but 'twas otherwise from 1682 to 1702.

"my Lord Baltimore, appears very distinctly set forth in a Report to his Majesty of 21 October 1717. from Sir Edward Northey and Sir William Thompson, then Attorney and Solicitor General, and of which we take leave to annex a Copy." The Lords of Trade further report, that there having been Disputes, between Lord Baltimore and the Proprietors of Pennsylvania, touching Boundaries, an Agreement was made, between them, 10 May 1732. relative thereto, and not being carried into Execution, the Proprietors of Pennsylvania had filed their Bill in Chancery against Lord Baltimore for a specific Performance thereof; "Which Dispute being yet depending in the said Court, we don't think it proper to advise any Alteration in the usual manner of appointing the Deputy Governor of the said Three Lower Counties." And the Lords of Trade re-transmitted the Petition from the President, Council and Assembly of Pennsylvania, relating to Boundaries, and other Papers on that Subject, but proposed, in order to prevent Disturbances for the future, that the King should enjoin the respective Governors to preserve Peace and good Neighbourhood. Co. Off. No. 37.

June 15.

The Defendant put in his Answer to our Bill, wherein, by the way, he now swears that the Lower Counties are by no means contiguous to Pennsylvania, for that one is of the one Side, and the others on the other Side of Delaware. A wonderful Change since his Petition of the 21st of April last, not two Months before!

July 21.

Lord Baltimore did not at all like the Report of the Board of Trade in Favour of our Nomination, wherefore he petitioned the King in Council against it; and insisted that by Sir Edward Northey's and Sir William Thompson's Report of 1717, it clearly appeared Mr. Penns had no legal Right or Title to the lower Counties; and that on 16 Jan. 1734. the Lords of Trade had made such an [*ex parte*] Report in his Favour; so that the Petitioner may very safely affirm that there has never yet been any one Determination in Favour of the Right claimed by Mr. Penns to the said 3 lower Counties, and he apprehends it is impossible for them to make out any legal Right or Title thereto; whereas it appears by the said [*ex parte*] Report, that the same are included within the Limits of the Maryland Charter: that tho' the said Counties have been, for many Years past, under the Government of the same Person as was appointed Governor of Pennsylvania, yet all those Governors (save the last) were so appointed while his Ancestors were under legal Disabilities, being Roman Catholics, and when the

Government of Maryland was in the Hands of the Crown, or during the Petitioner's Infancy, therefore hopes those instances shall not be used as an Argument now, when those Disabilities are removed; and the rather, because such Appointments have, in the Progress of the Disputes with Mr. Penn, been constantly made use of, and insisted on, as Evidence of their Right, in Opposition to that claimed and insisted on by the Petitioner; and, as such Approbation, at this Juncture, and pending the Dispute now carrying on in Chancery, would, in all Probability, be insisted on by them, as a further Evidence of their Right, not only against the Petitioner, but against the King too, which might be of great Disadvantage to the Petitioner* That the Petitioner does not desire the Government of the said Counties to be put into the Hands of any of his Nomination; all that he desires being, that they may be under the Government of an indifferent Person, till the Disputes between Mr. Penns and him, in relation thereto, are finally settled and adjusted; and that, whoever the Person is, he may be appointed by Commission directly from his Majesty. Therefore prays the King to reject Mr. Penns Nomination of Colonel Thomas to be Governor of the said lower Counties, and that the King will please to appoint Colonel Thomas, or such other as He shall think fit, to be Governor of the said Counties, by Commission from his Majesty, till the said disputes shall be finally determined between him and Mr. Penns; and that this Petition may come on to be heard at the same time with his former Petition, and the Report of the Lords of Trade made thereon. Co. Off. No. 38.

July 21.

This Petition was by Order in Council referred to the Lords of the Committee of Council to consider the same and report their Opinion thereon. Co. Off. No. 39.

Feb. 4.

A Report from the Committee of Council, That they had appointed a Day to consider the two Petitions of Lord Baltimore, referred the 21st of April and 21st of July, relating to the Appointment of the Deputy Governor, but, in the mean time, and before the Consideration thereof, the Agent for Lord Baltimore attended the Committee, and signified to them that there was a Suit now depending in Chancery between the Petitioner and the Proprietors of Pensilvania, for determining

*After all these Apprehensions, when this Petition was appointed to be heard, Lord Baltimore would not stand a Hearing; but prayed, and had Leave, to withdraw this Petition, that is, in effect, not to proceed on it, for the Petition still remains in the Office.

the Right to the said 3 lower Counties, and that the Petitioner, upon further Consideration, was willing to wait, till the same should be determined, and did not intend to make any Opposition to the Nomination of Colonel Thomas, and therefore prayed to be permitted to withdraw his said Petitions. The Lords of the Committee thereupon report that his Majesty may be pleased to permit and allow the Petitioner to withdraw his said two Petitions accordingly. Co. Off. No. 40.

Feb. 6.

By Order in Council made upon reading that Report, his Majesty in Council approved that Report, and ordered that the Lord Baltimore be allowed to withdraw his said two Petitions accordingly. Co. Off. No. 40.

Feb. 7.

Being the very next Day, the Lords of the Committee made a further Report, upon Mr. Penns Nomination of Colonel Thomas, that his Majesty might be pleased to approve of Colonel Thomas to be Deputy Governor of Pensilvania, and the 3 lower Counties of Newcastle, Kent and Sussex in the Manner, and upon the Conditions proposed by the Lords of Trade, [which were in the same Words as the other former instances] and Colonel Thomas, being then in the Leeward Islands, they proposed he might qualify himself, and give the Security, before the Governor or Commander in chief in one of the Leeward Island. Co. Off. No. 41.

Feb. 15. .

By Order in Council his Majesty approved that Report, and order'd according to what was thereby proposed. Co. Off. No. 42.

Note, An Entry of this last Order in the Newcastle Records, No. 11. Fol. 106.

1738, *May 4.*

The Lords of the Committee of Council made a Report to the King in Council, upon the Petition of the President, Council and Assembly of Pensilvania, and likewise some cross Petitions from Maryland, which had been referred to their Lordships on 17 March 1736, and 21 July 1737, complaining, on both Sides, of Disorders and Outrages, committed on the Borders of Maryland and Pensilvania; and stating that they had made a former Report on the 29 of July 1737, and that his Majesty had thereupon made a (temporary) Order on 18 Aug. 1737; That, since that Time, several fresh Petitions had come in, from Maryland and from Pensilvania, complaining of fresh Disorders, and that Mr. Penns had petitioned for the King's further Pleasure to be

declared relating to the said Order of 18 Aug. 1737; That the Lords of the Committee had on the 23d Feb. last proceeded to take all the Papers relating to the said Complaints made by each of the Provinces into Consideration, and were attended by Council on both Sides, and likewise by the Proprietors of both Provinces, and the Counsel desiring that Time might be allowed the Proprietors, to confer together, in order to come to some agreement amongst themselves, that so the Peace of both Provinces might be preserved, till such time as the Boundaries could be finally settled, the Lords of the Committee had complied with their Request, and being, this Day, attended by all Parties, the Counsel acquainted the Committee that the Proprietors, of each Province, had accordingly met and agreed to the there following Propositions; to which Propositions the Proprietors of each Province had signified their Consent, before the Committee, and declared their Readiness to carry the same into Execution, if his Majesty should be pleased to approve thereof; and the Committee, considering that this Agreement might be a proper Expedient for restoring Peace and Tranquillity between the said Provinces, and for preventing any the like Disturbances for the future, did therefore agree to lay the same before his Majesty for his Royal Approbation. Co. Off. No. 43.

Note, So much of that Agreement as any way relates to the present Point was, fixing between the (meer) Province of Pennsylvania and Maryland a Line for Temporary Jurisdiction, to be exercised in those respective Provinces. And as the Articles of 10 May 1732, had made the North Bounds of Maryland, and the South Bounds of Pennsylvania, to be just 15 Miles South of Philadelphia, so, to come as near to it as might be, (but not to confirm it) it was agreed that the provisional and temporary Limits, till the Boundaries should be finally settled, should be, on the East Side of Susquehannah River, 15 Miles and one Quarter South of Philadelphia, and on the West Side of Susquehannah River, 14 Miles and 3 Quarters South of Philadelphia; but this, to be without Prejudice to either Party; and it was also agreed that the respective Proprietors should receive the Quit-Rents due on their own Sides of that temporary Line; and the Order of Council of 18 Aug. 1737, (which had laid Restrictions upon Mr. Penns as to their granting out of Lands in the lower Counties) was agreed to be discharged.

May 25.

By his Majesty's Order in Council made upon reading the said Report, in order to preserve Peace and Tranquillity between the said Provinces, and to prevent any the like Disturbances

for the future, his Majesty in Council approved of the said Agreement, entered into between the Proprietors of the said respective Provinces, and ordered that the Proprietors of the said respective Provinces of Maryland and Pensilvania, should cause the said Agreement to be carried into Execution; whereof the said Proprietors, and all others whom it might concern, were to take notice, and govern themselves accordingly. Co. Off. No. 43.

1740, Jan. 29.

By Bargain and Sale enrolled Thomas Jackson re-conveys the Premises which had been mortgaged originally to William Penn for 5000*l.* unto John and Thomas Penn and their Heirs. As to one Moiety to the Use of John Penn and his Heirs in Fee, as to one Quarter Part to the Use of Thomas Penn and his Heirs in Fee, and as to the other Quarter Part to the Use of John and Thomas Penn in Fee, but in Trust for Richard Penn, his Heirs and Assigns for ever. Parchment Deed proved by Paris. 1740.

A written Map made of Part of Pensilvania, and of the three Lower Counties, &c. extremely material for the understanding of this Case, which Map divers Witnesses, Surveyors in other Provinces as well as in Pensilvania, have been examined and have spoken to, viz. Jacob Hewling, Thomas Miles, Thomas Noxon and Benjamin Eastburn. Map in a large marbled Paper Cover—Of which there is a printed Copy at the Beginning of this Brief (say Book.)

1742, May 28.

A Release from Letitia Aubrey (the Daughter of Proprietary William Penn) to the said John, Thomas and Richard Penn of the 10,000 Acres left her by her Father, and of all Claims by Virtue of his Will. This was executed in order to make her an unexceptionable Witness, she being examined 3 or 4 Days after. Parchment Deed proved by Paris.

CHAP. XVII. *Containing No Proof, but a Case stated to, and the Opinions of, Sir Clement Wearg. Mr. (now Lord Chief Justice) Willes, and Sir Philip Yorke, (now Lord Chancellor) thereon, relating to the Construction of Lord Baltimore's Charter, and his Bounds.*

MARYLAND, in the Grant from King Charles the 1st to the Lord Baltimore, dated the 20th of June 1632. is thus described, viz. "That Part of a Peninsula, lying in the Parts of America, "between the Ocean on the East. and the Bay of Chesapeake on "the West, and divided from the other Part thereof by a Right

"Line, drawn from the Promontory or Cape of Land called Watkins's Point (scituate in the aforesaid Bay near the River Wight) on the West, unto the main Ocean on the East, and, between that Bound on the South, unto that Part of Delaware Bay on the North, which lyeth under the 40th Degree of Northern Latitude from the Equinoctial, where New England ends. And all that Tract of Land, between the Bounds aforesaid, that is to say, passing from the aforesaid Bay called Delaware Bay, in a Right Line, by the Degree aforesaid, unto the true Meridian of the first Fountain of the River Potomack, and, from thence, trending towards the South, unto the farther Bank of the aforesaid River, and following the West and South side thereof, unto a certain Place called Cinquaque, situated near the Mouth of the said River, where it falls into the Bay of Chesapeake, and from thence, by a straight Line, unto the aforesaid Promontory or Place called Watkins Point."

Pensilvania, in the Grant from King Charles the Second to William Penn Esq; dated the 4th of March 1680, is thus described, viz. "All that Tract or Part of Land in America, with all the Islands therein contained, as the same is bounded on the East by Delaware River, from twelve Miles Distance Northward of Newcastle Town, unto the 43th Degree of Northern Latitude, if the said River doth extend so far Northward, but if the said River doth not extend so far Northwards, then, by the said River so far as it both extend, and from the Head of the said River, the Eastern Bounds are to be determined by a Meridian Line, to be drawn from the said River unto the 43th Degree; The said Lands to extend Westward five Degrees of Longitude, to be computed from the said Eastern Bounds, and the said Lands to be bounded to the North by the Beginning of the three and fortieth Degree of Northern Latitude, and on the South by a Circle drawn at 12 Miles Distance from Newcastle. Northwards and Westwards, unto the Beginning of the 40th Degree of Northern Latitude, then, by a straight Line, Westward, to the Limits of Longitude above-mentioned."

The Grant of Maryland begins with that Part of a Peninsula lying between the Ocean on the East (by which most of it is bounded) and Chesapeake Bay on the West: The Extent of the Province Northward is to that Part of Delaware Bay, which lyeth under the 40th Degree of Northern Latitude, and the Northern Boundary of it is a Right Line passing from Delaware Bay by the Degree aforesaid. In this Description, Delaware Bay is twice mentioned as the Limits of Maryland; but neither Delaware River, which falls into the Bay of that Name, nor Sasquahannah, the great River which falls into the Head

of Chesapeake Bay, are mentioned on any account; but the Peninsula is confined to the Ocean and Bay of Delaware on the East, and Chesapeake Bay on the West, which two Bays, bending in, at their Heads, towards each other, truly from a narrow Isthmus or Neck of Land terminating the Peninsula there.

The Geographical Maps of those Parts, extant at the Time of the Grant for Maryland, from whence there are very strong Arguments to prove the Description of that Province was taken, placed 40 Degrees very near to the Head of Chesapeake Bay and the aforesaid Isthmus there.

From all which it appears where the Northern Boundary of Maryland was, by the Grant, understood to be placed, viz: at that Isthmus or Northern Part of the Peninsula, near the Heads of the Chesapeake and Delaware Bays, and not far from the Town built on Delaware by the Dutch, since called Newcastle.

Pensylvania, by the Grant for it, is bounded on the South by a Circle drawn at 12 Miles distant from Newcastle, Northward and Westward, that is, by the Northward and Westward Parts of that Circle, unto the Beginning of the 40th Degree of Northern Latitude, then by a straight Line, &c. which seems perfectly to agree with the above-mentioned Bounds of Maryland.

In the Years 1681 and 82, great Numbers of sober and industrious People, with their Families and Estates, by Favour of that Grant, went over to Pensylvania, and there laid out their Substance in settling themselves, and making large Improvements, beginning at the Southern Bounds of the Province on Delaware River, as those Bounds are above described.

And about the Year 1693, the Lord Baltimore, then in Maryland, caused a Line to be run and marked out, 6 or 8 Miles more Northerly than the above-mentioned Bounds, as his Northern Boundary at that time; Upon which he demanded of the Proprietor of Pensylvania, all the Lands to the Southward of it, as by the Copy of his Commission annexed, appears: and Pensylvania, to avoid Contention, has never, hitherto, made any Grant or Settlement to the Southward of that Line.

But in the Year 1714, by a large Astronomical Instrument sent over on purpose, and by another since that time, the Lord Baltimore caused Observations of the Latitude to be made, by which they extend the Claim of Maryland not only beyond the Peninsula and Isthmus, the Bays of Delaware and Chesapeake, and the Line run by the present Lord Baltimore's Ancestor, but, passing the Isthmus, they carry it up the Rivers Delaware and Sasquahannah (which exceedingly diverge in their Courses) so far as to take in the most valuable Improvements of all Pen-

silvania, alledging that the true Position of the 40th Degree will fall somewhat above the Town of Philadelphia, and that they are not to be confined to the Description of the Peninsula and Bay of Delaware, tho' these are visible Places on the Earth, which may always be certainly known, while Astronomical Observations are always subject to be controverted; but that their Grant will extend as far as the said Latitude of 40, where ever that shall be found to fall, by Observations skilfully taken.

Now, allowing that what is most commonly understood by the 40th Degree, should, by more accurate Observations at this time, be found to reach more Northerly than was supposed by the respective Grants.

Quære, Whether the Lord Baltimore has, or can claim, a Right to any Lands lying to the Northward of the Peninsula, and of the Bays of Delaware and Chesapeake, and beyond the Bounds, as understood at the time of his Grant, within the Grant of Pensilvania, now settled above 40 Years?

This Question depends upon the Intent of the King, with regard to the Boundaries of Maryland, and it seems to me, by the Boundaries described in the Charter, that the King intended Maryland should not extend North beyond Delaware Bay, which was then thought to reach to the 40th Degree of Northern Latitude, and so described by the Charts of those Times; and tho', upon a more exact Observation, it shall be discovered that the Bay don't reach so far North, yet, I apprehend, the North Part of the Bay was intended to be the North Boundary of Maryland: This is confirmed by the subsequent Grant of Pensilvania, and by the Line drawn by the Ancestors of the Lord Baltimore. C. Wearg, 11 April. 1724.

I am of opinion, that Lord Baltimore has no Right to any Lands lying Northwards of the Isthmus of the Peninsula, beyond the Bays of Delaware and Chesapeake: The Limits of Maryland are, by the Grant of King Charles the First, plainly fixed there; And by the subsequent Grant to Mr. Penn by King Charles the Second, 'Tis likewise manifest, that Pensilvania was to extend as far Southward as the Beginning of the said Isthmus and Bays, except only that little Compass of Ground round about Newcastle. The Alteration of the Latitude, which gave occasion for this Dispute, seems to me to be of no consequence at all, since the Latitude was mentioned in Lord Baltimore's Grant for no other purpose but to describe that Tract of Land which was then esteemed to lie under the 40th Degree of Latitude. To ascertain the Bounds, therefore, it must be considered where the 40th Degree of Latitude was fixed at the time of the said Grant, and tho' that appears to be mistaken

by some latter Calculation, the Case will not be altered thereby, since that Tract of Land which, at the time of the said Grant, was esteemed to be in that Degree of Latitude and not any Point in the Heavens, was to be the Mark of the Boundary betwixt Penslvania and Maryland; besides, as neither of the Rivers of Delaware or Sasquehannah are mentioned in Lord Baltimore's Grant, and as it expressly appears by that Grant, that Maryland was not to extend Northwards beyond the Isthmus of the Peninsula, for those Reasons, likewise, 'tis plain to a Demonstration that there is no colour for extending the Bounds of Maryland Northwards, as Lord Baltimore endeavours to do. J. Willes, 28 Feb. 1733.

I am of opinion, that the Boundaries described in the Lord Baltimore's Grant, must now be understood in the same manner as they were at the time of the making thereof, and consequently, that in case the Extent of Maryland to the North should be taken to be to the 40th Degree of Northern Latitude, yet, that 40th Degree must be taken to be according to the Calculation allowed at that time, and as it was then laid down in Maps and Charts, even tho' that Calculation was really erroneous. And what the rather convinces me that Lord Baltimore can claim nothing to the Northward of the Peninsula is, that the Description is not, to the 40th Degree of the Northern Latitude, but to that Part of Delaware Bay which lies under the 40th Degree of Northern Latitude. Now, if Delaware Bay be rightly laid down in the Plans laid before me, no Part of it comes near to that Line, where, by their late Observations, they would fix the 40th Degree of Northern Latitude, and therefore that could not be the Northern Boundary intended by the Grant. P. Yorke, 23 May, 1724.

We shall find some trifling Surveyors Dependents on the Lord Baltimore taking upon them to expound the King's Charter, very badly as Lawyers, and if possible worse as Mathematicians, by and by. Against whose Opinions the foregoing will abundantly serve.

And now we come to the Depositions of Witnesses on both sides.

DEPOSITIONS FOR THE PLAINTIFFS, WITH SOME OBSERVATIONS THEREON.

NOTE, The Proofs being abundantly long, the common Proof of the Execution of Deeds, or of Copys of Papers from the Chapel of the Rolls, Council Office, or Board of Trade, &c. which are not attended with some special Circumstances, are

omitted here; having a Scheme in my Hand, ready to turn at the Hearing, instantly to the Proof of any such Papers as those, if demanded.

NOTE, As often as we quote the Depositions of

*John Anderson,

*John Garetson,

*James Steel, who was one of our Commissioners to execute the Articles, and our Receiver General of Quit-Rents.

*Wooman Stockley,

*William Till,

William Waples, there is this Mark set before their Names, which is, to denote that the Defendant has cross examined them as to their being interested only, which they have so far acknowledged, as to say they hold Lands in the three Lower Counties, under the Plaintiffs; altho' some of them say, they don't believe themselves concerned in the Event of the Cause, notwithstanding that; their cross Examinations are at the very Beginning of the Brief of the Defendant's Depositions, where you'll see how far their Concern leaves them good Witnesses, or not. If you think them all exceptionable, we have other Witnesses, to the Point they speak to; and, rather than fail, the Defendant, himself, has proved every Fact for us. The Person we would least choose to lose is James Steel, who is one of our Witnesses that prove our receiving of Quit-Rents, tho' that also the Defendant has likewise proved for us.

1ST BRANCH, relating to the first Discovery of the Peninsula, and the first Maps publish'd before the Year 1632, and how many several Editions of Captain Smith's Book had been publish'd before that Year.

Benjamin Eastburn, (Surveyor General of Pensilvania, aged 44. [Lib. C. fo. 678. Int. 2. fo. 769.]

Is acquainted with some Parts of the Peninsula, which shoots out, Southerly from the Main Land or Continent of America into the Ocean, and which lies between West New Jersey and Chesopeak Bay. Became acquainted with the Eastern Parts thereof, lying on Delaware Bay and River, and Part of the Ocean, from Certificates and Drafts of Surveys of Lands made therein under the Pensilvania Proprietors; which Certificates and Drafts were returned into the Surveyor General's Office in Pensilvania, which Office he has enjoyed for seven Years past: Became acquainted with the Northern Parts of the said Peninsula by travelling and making Personal Observations there. Has acquired his Knowledge

of the other Parts of said Peninsula, by reading and studying Books and Maps of Geography, and Accounts of Voyages and Discovers of Lands and Territories in America. Such Maps, Books and Accounts have been his Study for about twenty Years. That in 1624, Captain John Smith published a Book, containing an Account of said Peninsula, and several adjacent parts, with a Map describing the same. Which Book and Map he believes, was the first particular Account and Description of those Parts, published by any Englishman. Has look'd on that printed Book, exhibited to him, the same is the Book by him before mentioned, and which he believes, is well known amongst Historians, Geographers and Mathematicians. Likewise believes that the Map between Fol. 40. and 41. of that Book, in which Map there are these Words, (Discovered and described by Captain John Smith 1606.) is well known to Historians, Geographers and Mathematicians. And the said Book and Map are generally reputed and esteemed to be published by said Smith in or about 1624. Says he neither knows nor has heard, that any other Book or Map, describing the Parts aforesaid, were printed or published, by any Englishman, before the Month of June 1632.

James Logan, aged 66. [Lib. B. fol. 76. Int. 2. fol. 78.]

Is well acquainted with the Peninsula, lying between West New Jersey and Chesopeak Bay; became acquainted with it, by ocular Views, by Maps, and by reading Books of Geography and History. Has consulted and considered Maps, Books of Geography and History, and Accounts of Voyages, at times for 30 Years past. From his Reading and Observation believes Captain John Smith, the Author of Smith's History of Virginia, printed in London 1624, was the first Englishman that printed any Map and Account of the said Peninsula, and the Territories adjacent thereto. That he has look'd on the said Book, now produced, and believes it is well known amongst Historians, Geographers and Mathematicians, and was the Foundation of Beverly's History of Virginia. Has viewed the Map of Virginia, between Fol. 40. and 41. of the said Book, in which Map it's said that Virginia was discovered and described by the said Captain Smith in 1606. And believes the said Map is likewise well known amongst Historians, Geographers and Mathematicians; and which Book and Map he believes, are generally esteemed to be publish'd by Captain Smith, about the Time in the Title-Page mentioned; and are, as he believes, of unquestionable Credit amongst all learned Men; has neither known, seen, or been acquainted with, any other printed History, Map, or Description of the said Peninsula, done, or reputed to be done, by any

Englishman or Foreigner, that were extant so early as June 1632. And believes there is not any other, because, on diligent Search of Mercator's, Jansen's, and Bleau's Atlas, he could never discover any.

Ferd. John Paris, [Lib. A. fol. 195. Int. 26. fol. 312.]

Has diligently enquired after the most ancient printed Map of Virginia, or the Places in Question, that had been made, or was reputed to have been made, by any Englishman; and the Account he obtained was, that Captain Smith's Account of Virginia, and his Map thereof, were the first and best Accounts of the Discovery, and his Map the earliest printed Map, of those Parts, that were ever printed by any Englishman; whereupon, made very diligent Search, to find out as many ancient Editions thereof, as he could; and found the said Map, in some printed Accounts, said to be of Captain Smith's and bearing Date severally in the Years 1612, 1624, and 1625. Saith, the Quarto bound Book produced and lettered (West-Indies B.) he found in a Collection of Books, which he is informed and believes, was heretofore given by Dr. White Kennet, Bishop of Peterborough deceased, to the Society for the Propagation of the Gospel in foreign Parts, for an American Library for the said Society; and out of which Collection or Library he borrowed that Quarto Book, which contains sundry printed Tracts, relating to several Parts of the Continent of America, bound up together; the first whereof is entitled, A Map of Virginia, with a Description of the Country, &c. written by Captain Smith, some time Governor of the Country, and mentions to have been printed at Oxford by Joseph Barnes 1612; at the End of which Tract, in the said Quarto bound Book, there is a printed Map of Virginia, which is therein said to be discovered and described by Captain John Smith; saith that in his Searches, he, at several Booksellers, met with a thin Folio Edition of a Work, which appeared to this Deponent to be an ancient Book, and which was entitled, The General History of Virginia, New England, &c. also the Maps and Descriptions of all those Countries, &c. divided into 6 Books, by Captain John Smith, sometimes Governour in those Countries, &c. and Admiral of New England. London printed for Michael Sparkes 1624; before the Page (41) of which thin Folio, there is the like printed Map of Virginia (to this Deponent's belief) with that in the said before mentioned Quarto Book of 1612; and easily finding many printed Copies of the said thin folio Book and Map, did, therefore buy two (if not three) of the same, one of which is now produced, having the Letters J. S. stamp'd into the Cover. And also found out

another very large Collection of Discoveries and Voyages, contained in a Work said to be printed in 1625; which consists of several thick Volumes in Folio, and is commonly called Purchas Pilgrims; in one Volume of which last mentioned Work now produced and lettered (Purchas Pilgrims Vol. IV. between Pages 1690 and 1691, another like printed Copy of the said Captain Smith's Map, appears to this Deponent to be fixed; and which Map in Purchas's, and in Captain Smith's thin Folio History, this Deponent believes are both printed off from one Plate which believes not only from the great Similitude of the two Copys, but also from an Observation upon both the said Maps which he particularly mentions, besides which three Editions of 1612, 1624, and 1625. the Deponent upon his best Observation, believes that the Book in Ogylby's of 1671, (before mentioned by and produced to the Deponent) does about Fol. 192, contain a Map of New Virginia, likewise drawn from, and nearly correspondent to, the said Smith's Maps, in the Out-Lines of the Country, and Places therein contained.

2D BRANCH to prove my Lord Baltimore's now printed Book and Map, and Description of Maryland, and how far he then claimed: published in the Year 1635, within three Years after the Date of his Charter, and soon after he had landed in, taken Possession of, and settled his Province of Maryland.

Dr. Thomas Stack. [Lib. A. Fol. 41. Int. 45. Fol. 42.]

That he has looked upon the Book or Collection of Tracts, bound up all together, now produced, which is a Volume of about 19 various Tracts, on different Subjects, several of which regard our Foreign Plantations; and it is mark'd, at the Top of the first Leaf within the Cover C. 199, which is a Mark of Sir Hans Sloane's Library, to which the said produced Volume answers in his Catalogue; the same Page also contains these Words (Hans Sloane) written by himself, as he acknowledged to this Deponent: and this Deponent is well assured. Saith that Sir Hans Sloane is the present Owner or Proprietor of the said Volume, and which he can depose, because that on Tuesday last, he intrusted the Deponent with the said Volume, out of his Library, in order to be examin'd to in this Cause, on the Deponent's giving him a Receipt for the return thereof to him again, and also, because, that, some Years ago, he intrusted this Deponent therewith, in order to be produced at the Board of Trade. And further for that, in examining Sir Hans Sloane's Library, in the Year 1733, soon after he appointed the Deponent

his Librarian the Deponent then took Notice of the said produced Volume. And verily believes Sir Hans Sloane has been in Possession of the said Volume between 40 and 50 Years, for that very particular Tract contained therein is entered in the first Volume of his Catalogue, in his own Hand Writing, which first Volume of his Catalogue, as far as is written by himself, does not to the best of the Deponent's Remembrance, contain any one Book or Tract publish'd since the Year 1699; and therefore believed that he was in Possession of all the Books, entered by himself in the said first Volume in or before the said Year 1699; and saith that Sir Hans Sloane has been collecting ancient and curious Books and Tracts ever since 1682, at least, as he has often told the Deponent and the Deponent is well assured to be true: for the Deponent has often taken Notice of several Books in his Library, in which he mark'd the Date of buying and purchasing them to be 1682, written with his own Hand, in the said respective Books; and saith that Sir Hans Sloane has a very large Library, and in particular, a vast Collection of small Tracts, commonly called Pamphlets; and the Deponent observed whilst he took Care of Sir Hans Sloane's Library, that he had been from the said Year 1682, and then was extremely curious in collecting every thing, especially Old Tracts published, or even in Manuscript, relating to our Plantations and Settlements abroad, Voyages and Travels, and many other things; on which said particular Subject does not remember that Sir Hans ever omitted to purchase, or endeavoured to purchase, any Book or Tract, especially Old ones, that a most dilligent enquiry and examination, or perusal of Catalogues of Books to be sold could intimate to him; saith the precise Time when the said Sir Hans Sloane became first possessed of the said produced Volume does not appear by any List, Catalogue or Account kept in his Library, but firmly believes Sir Hans has been in Possession thereof between 40 and 50 Years for the Reasons above mentioned. Saith that he hath look'd upon that particular Tract, bound up in the said produced Volume, which purports to contain (a Relation of Maryland, together with a Map of the Country, the Conditions of Plantation, his Majesty's Charter to Lord Baltimore translated into English) and bearing for its Date September the 8th, Anno Dom. 1635. And takes himself to be pretty well acquainted with Books, having had Academical Education, and always loved Books, and having taken Care of Sir Hans Sloane's Library about 7 Years; which Library contains near 40,000 Volumes, among which are an immense Number of small Tracts, collected and bound together in Volumes, for their Preservation; and he

also, having at present, and for some time past, the Care of Dr. Mead's Library. and having about 2500 Volumes in his own Study or Library. And saith it is no difficult matter for a Person conversant with Books, to distinguish an Old Book, or a Book printed above a 100 Years since, from a New Book; the Letter or Type, the Paper, often the Paper-Mark, and in short the whole Face or Appearance of the Book or Tract, are very good Grounds to make such a Distinction. And saith that he saw and considered the particular Tract of the said produced Book herein above-mentioned, upon the Occasion here after mentioned, (to wit) about 7 or 8 Years ago, a Gentleman unknown to this Deponent, who called himself Mr. Penn, came to Sir Hans Sloane, and desired a Sight of the said particular Tract: whereupon the Deponent, by the said Sir Hans Sloane's Direction (to whom the Deponent was then Librarian) look'd for the Entry of the said Tract in his Catalogue, (the usual way of finding Books in great Libraries) and having found it, the Deponent brought the said produced Volume which contains it, to the said Sir Hans, who in this Deponent's Presence shewed the said particular Tract, and the Map contained therein, to Mr. Penn; and the said Mr. Penn desired the Loan of it, for a Day on any Security, which Sir Hans did not agree to; but the said Mr. Penn urging that it would be a great Detriment to him, in a Cause depending between him and the Lord Baltimore, if the said produced Book could not be produced that same Day at the Board of Trade. the said Sir Hans said, he would intrust the Deponent with it, for that purpose. on Condition that the Deponent would not part with it out of his Sight or Possession, but barely produce it at the said Board of Trade, if required; and therefore he desired the Deponent to take the said produced Book, and carry it directly to the said Board of Trade and bring it back again; which the Deponent accordingly did; and after the Deponent's return home to the said Sir Hans, this Deponent carefully examined and considered the said Tract in particular, and really believes that the said Tract is a genuine one, printed and published at the Time of its Date, (to wit) September the 8th 1635, and not a new or modern Tract; and that the Motive of the said Sir Hans Sloane, in procuring the said particular Tract was, his extreme Curiosity in purchasing every thing published or even in Manuscript, relating to our Plantations abroad; and really believes Sir Hans had no private View in procuring the said Tract, nor any View therein than that of making his Collection of Books and Tracts on the Subjects before-mentioned as compleate as he possibly could, and consequently, no View of deceiving or imposing on any Person whatsoever. And

saith that the said Tract has an Engraved and Printed Map inserted, between Pages 12 and 13, and bound up with it, which Map it had at the Time this Deponent examined it, as above-mentioned. And saith the said Map hath these Words (Hans Sloane) written on the Back of it, which the said Sir Hans told the Deponent he formerly wrote on it, to the best of his Remembrance, upon occasion of lending the said produced Volume out of his Library. And saith that upon a strict Examination, and impartial Observation, on the said Map, he does verily believe it to be a genuine and ancient Map, cotemporary with the said Tract, to be intended for the said Tract, and to be the very identical Map expressed in the Title-Page of the said Tract. And saith he hath looked upon a small printed Tract, now likewise produced, which is not complete or perfect at the latter end thereof; and which is marked on the Outside (Maryland 1635.) and he hath also looked upon the written Map of Maryland, contained between the 12th and 13th Pages thereof; and saith that he hath very carefully and diligently examined and compared the said last mentioned single Tract (so far as it goes) with the above-mentioned particular Tract in the aforesaid produced Volume of Tracts, and finds they very exactly and minutely agree together, except that the Title-Page in the said single Tract having been partly wore or tore off, and the Defect thereof supplied by Writing, this Deponent observes that the Word (London) which is printed underneath the Word (Dolphin) in the said produced Volume, is omitted to be copied in the said single Tract; and really believes that the said two Tracts are equally genuine, so far as they are perfect; and that they are two Copies of the same original Impression, of the same Tract; for this Deponent finds an exact Agreement or Sameness, in the Frame of the Letter-Press, the Letter or Type, the Lines of each Page, the Orthography, the Punctuation, the Errors, some bad Types, and the Mark or Alphabet of the Sheets at the Bottom of the Pages. And saith he hath compared and examined the written Map, contained in the said single Tract, with the printed Map contained in the said produced Collection of Tracts, and believes the said written Map to be a good Copy of the said printed one. And this Deponent has observed that there is, in both the said Maps, a Place called Chesopeak Bay, and each of the said Maps contain a prick'd or dotted strait Line, running quite thro' the said Maps, from East to West, at the Figure (40) which Figure (40) is at the East-side or Border of the said Maps; and the said prickt or dotted streight Line, in both the said printed and written Maps, runs in the same place, or extremely near, in each of the said respective Maps; and the said prickt or dotted streight Line runs

close in one part thereof, to the Head of Chesopeak Bay, in both the said printed and written Maps.

NOTE—The Use of establishing this Book and Map printed by Lord Baltimore himself, so early as in 1635, to invite Persons to settle his Country, in three Years after it was granted to him, is to shew that then he laid down the 40th Degree compleat to touch or make a Tangent to the Head of Chesapeak Bay; whereas he has since from time to time encroacht, and we have now granted to him, beyond every of his Encroachments.

Ferd. John Paris [Lib. A. fol. 195. Int. 27. fol. 322.]

That he hath diligently enquired after the most ancient printed Maps and Accounts of the particular Province of Maryland, but hath not been able to discover more than two such anciently printed Maps and Accounts which particularly and professedly treat of Maryland, as a particular Province: The one of which was, and is a small Quarto Book called or said to be a Relation of Maryland, together with a Map of the Country, the Conditions of Plantation, his Majesty's Charter to the Lord Baltimore translated into English, &c. and bearing for the Date of such Book the 8th of September, Anno Domini 1635, in which was a Map of Maryland and the other was the said Book of Ogilby's of 1671 before spoken of by, and produced to this Deponent; In which last mentioned Book, at about Folio 183, there appeared to this Deponent to be a new Description of Maryland, together with a Map of that Province very nearly agreeing in the Out Lines (according to the Deponent's best Judgment and Belief) with that in the said small Book of 1635; but containing more and other Names, and different Names, of Places from those contained in the said other Book and Map of 1635; But, besides such printed Maps and Accounts, the Deponent found out, at the Board of Trade, a written Map of Maryland, which the Deponent believes and apprehends, to have been a Map of some Antiquity, and before any Grant was made from the Crown of the Province of Pensilvania because, that the Deponent does not, to his apprehension, perceive any Notice taken therein of any such Province as Pensilvania.

3D BRANCH, containing the strongest Proof uncontradicted, that the Nature of the Case can admit of, that there never was any real Order of Council of 4th April 1638, about William Clayborn and the Isle of Kent; but that such Order was made or invented, by Lord Baltimore in the Year 1635.

Ferd. John Paris [Lib. A. fol. 195. Int. 23. fol. 292.]

That he hath perused the Paper produced, markt Botra No 4, and the same bears Date the 4th Day of April 1638, and, according to the Terms and Expressions therein, the same appears to be of the Purport of a Report or Order, of the Privy Council, or of some Lords or Committee thereof, upon some Petition of one William Clayborne relating to the Isle of Kent; and the Deponent got the said produced Copy from the Office of the Lords Commissioners for Trade, and the Reason and Occasion of looking after, and getting out, such produced Copy were, that the Deponent found that Mention was made of some such Paper, in a Petition presented to his Majesty, in the Name of the Defendant on 8th of August 1734, and also in a Report made by the Lords for Trade upon such Petition, on 16th January 1734; wherefore the Deponent was desirous to see what such Paper was? And saith that the Original Paper at the Board of Trade, (from which such now produced Paper was copied) and with which the Deponent examined the same, appeared to be bound up in a Book, not by way of regular Entry of any Papers of the Year 1638, or about that time, but along with a miscellaneous Collection of many other Papers of many different Kinds, Sizes and Dates relating to many different Matters; and such Original Paper did not appear to this Deponent to have then, or to have ever had any Sign, Seal or Mark of Attestation, whatsoever to the same, nor to carry with it any Degree of Authority or Authenticity, to the Deponent's Belief: and as the Deponent conceived that great stress was laid (in the said Petition in 1734) upon such Paper, and as the Deponent discovered some Entries (in or about 1685) that seemed (to this Deponent's Belief) very much to question the Authority of such Paper, the Deponent therefore made Enquiry at the Privy Council Office, whether the Privy Council Registers or Journals of the Year 1638 were in Being or not? Upon which Enquiry being informed that the Council Registers of that Year were in Being, the Deponent did search, and look into the same, and did there find many Acts, Proceedings or Orders of the Privy Council in the said Year 1638, and several of Dates very near the Day, (if not upon the very Day) that the produced Copy bears Date, but after diligent Search made by him could find no Entry there, of any Order, of any such Date as the said

produced Copy, or of any other Date, which related to the said William Clayborn and the said Isle of Kent, of any like Purport with the said Copy now produced.

Samuel Gellibrand [Lib. A. fol. 91. Int. 5. fol. 102.]

Has lookt upon the Exhibit Botra No 4. which purports to be a Copy of Report of the Commissioners for Foreign Plantations upon Clayborne's Petition against Lord Baltimore dated 4th April 1638. Says he never, at any time, saw an Original of the said Paper under any Seal; nor any Copy of it which purported to be signed or attested as an authentick Copy, by any Clerk of the Council. Nor is the Paper, from which the produced Copy was copied, entred up in any Original Journal or Register Book of the Acts and Orders of the Committee of Council for Trade and Plantations, of the Year 1638, or about that time, as he most assuredly believes; For he has made diligent Search, in the said Journals and Registers, of and about that Year, and can find no Entry thereof. Says the Paper, from which the produced Copy was made, remains bound up in one of the old Books in the Plantation Office, with many other Papers, such as Petitions, Orders, Letters, and the like, some whereof are Originals, and others only Copies, which were, as he assuredly believes, at various times, during the Space of several Years, before the Affairs of Trade and Plantations were put into Commission as aforesaid, presented to, laid before, or left with the said Committee for Trade, or their Secretary or other Officers. Says the said Book is not a Book of regular Entries, in any regular Series, but contains miscellaneously, many different Papers relating to many different Matters and Persons, and of many different Dates; and the Papers bound up therein are not all of a size, but some are small Papers, others large, some of them contain Part of a Sheet only, others several Sheets. The 3 Papers contained therein, next preceeding that from whence this Copy was made are dated 18th August 1635, 13th October 1638, and 3 July 1663; and the three Papers, next following it, are dated 4th April 1638, 12th May 1684. and 20th April 1685. Says it has been the Custom and Usage in the said Office, to bind up, in Books, such Papers, and Copies of Papers, as Persons have presented to, or laid before, or left with the Committee, or Lords Commissioners for Trade, or their Secretary; And, in case any Person having Business depending before the said Lords Commissioners should at this time, present to them any Paper as a Copy of an Order of Council of some old Date, and should leave it before them, such Copy would, according to the Course and Usage of the said Office, be bound up into a Book, when there should be Papers enough to make a Volume of, digested

under their respective and distinct Heads and Titles in Order of Time as received and delivered, which was not as he observed so regularly done before the Affairs of Trade were put under Commission as aforesaid. Says he has lately perused and read the Minutes and Records of 8th and 17th October 1683 of the Committee for Trade and Plantations, relating to a Matter then in Contest between Lord Baltimore and Mr. Penn, whereby it appears that they attended the Board on both those Days, and that on the 17th of October the Lord Baltimore had undertaken to procure an authentick Copy of a Report made by the Commissioners for Foreign Plantations on 4th April 1738, touching the Differences between Lord Baltimore's Predecessors and William Cleyburne about the Isle of Kent; From whence it seems probable that the Paper, from which this Copy was made, was first offered to the said Committee by Lord Baltimore in October 1685. And says the produced is a true Copy of that Paper in the said Book.

Charles Dickenson [Lib. A. fol 19. Int. 38. fol. 27.]

That he is Office-Keeper and Servant to the Council Chamber of his Majesty's Privy Council, and has been so ten Years or upwards; and saith that the Council Registers of the Acts, Orders, Reports, and Proceedings of the Privy Council, and of the Lords or Committee of Privy Council, of the Year 1638. are in Being, in the said Office. And saith that he hath carefully examined the Council Registers, in order to find out the Entry of an Order or Report made the 4th of April 1738, upon the Petition of William Clayborne relating to the Isle of Kent; and saith that he did find several Entries in the Council Registers, wherein the Orders and other Acts of the said Year 1638 are entred, of the very Date of the 4th of April 1683, relating to other different Matters, but this Deponent could not nor did find any entry therein of the said 4th April 1638 of any Report or Order of the Lords or Committee of Privy Council which related to William Clayborne and the Isle of Kent; though he carefully searcht in the said Council Registers for the same.

What adds to this Proof is, that the pretended Order of 4th April mentions a supposed prior Reference of Clayborne's Petition to that Committee. But there is no such Reference neither to be found, so that it's manifest the whole is an Invention.

4TH BRANCH, shewing that the Swedes, the Dutch, and the Duke of York, successively, held the Lands now called the three Lower Counties, under the Names of New Sweden, New Netherland, South River, Delaware, Sandhook, from the Year 1630 downwards. That the principal Seat of Government was then at New York. And Lord Baltimore's Ancestors never possess—also of the Conquest from the Dutch in 1664.

John Rambo of New Jersey aged 79 [Lib. B. fol. 36. Int. 27. fol. 37.]

Knows the Province of Pensilvania, is acquainted with Newcastle, and has been at the Place commonly called the Whorekills, but is not otherwise acquainted with the three Lower Counties. Knew the Province before it was called Pensilvania, being upwards of 70 Years ago [before 1670] Has heard from his Father and other old People, that the said Countries were originally settled by the Dutch and Swedes, but by which of them first does not remember to have heard. But knows that the same Countyes have been since under the Government of the English. Has heard that the said Countries were first called New Swedeland by the Swedes, And knows that the same Countries were, afterwards called South River by the Dutch, and sometimes were called Delaware River. And that the Province of Pensilvania has been called by that Name, ever since William Penn's being Proprietor thereof; but by what Names the said three Lower Counties were since severally called knows not. Knows the Bay and River of Delaware, which as he has heard was formerly called South River, but, after the coming of the English were called Delaware River and Bay. Has been informed by the Sailors, that, when they come in from Sea and arrive at Bombay Hook, anciently called Bombkeys hook, they suppose and take themselves to be at the Head or End of the Bay, at the Beginning or Entrance of the River. That Newcastle was formerly called Sandhook by the Dutch, and, since the same has been in the Hands of the English, has been called Newcastle, and does not know or remember to have heard the same called by any other Names. Does not know nor has heard, that the said three lower Counties were anciently divided into Counties, but has heard that the Creek at Lewis town, near the Capes, was called the Whorekills. Does not know, nor ever heard, that the said Province of Pensilvania, and the three lower Counties or any part thereof, were ever under the Government of Lord Baltimore.

William Peterson of New Jersey aged 92. [Lib. B. fol. 24. Int. 27. fol. 25.]

Has known the Province of Pensilvania and the Land between

Newcastle and Whorekill, formerly called Sandhook, a long time, and before William Penn came into the Country; but can't ascertain the exact Time of his first Knowledge, nor does he know that any part of the Land between Newcastle and Whorekill was ever called Kent; when he came into the Country the said Province, and the Land there called Sandhook were in Possession of the Dutch, under the Government of the Province now called New York, at that time called Manhadas. And has heard from the Swedes, that the said Province and Land were possest, by People of their Nation, before the Possession of the Dutch. That the said Province and Land were formerly called New-Netherland by the Dutch, but after the Arrival of William Penn here they were called Pensilvania and Newcastle. He knows the Bay or River of Delaware, and never heard it called from the Mouth between Cape May and the Whorekill, where it enters into the Sea, upwards, by any other Name than the Bay or River. Has never heard, or known that the Province of Pensilvania or the Counties of Newcastle, Kent and Sussex, or any of them, have been under the Government of Lord Baltimore Proprietor of Maryland.

Samuel Preston [Lib. B. fol. 312. Int. 27. fol. 336.]

Has heard and believes that the Bay and River were formerly under the Government of the Dutch, and were then called South River by the Dutch, and also in some old Dutch Maps which he has seen. Has also heard that the Swedes had formerly some Pretensions in those Parts.

Thomas Noxon aged 40. [Lib. C. fol. 488. Int. 27. fol. 502.]

Has heard from many old Dutch People, Inhabitants of the City of New York, and of ancient Dutch, Swedes, and other ancient Inhabitants of the County of Newcastle, and believes, that all the Lands on the West side of Delaware River and Bay, from the Ocean up to about the Falls of Delaware, were under the Dutch Government, whose principal Seat was at the said City of New York formerly called Manhatans; their whole Possessions in those Parts being at that time called New Netherlands. Says he is the more confirmed in this Belief because it appears from the Dutch Records at the City of New York, that the said Lands on the West side of Delaware were under the Government of the Dutch from 1630 to 1664. By which Records it also appears that about 1637 the Swedes made Encroachments upon the Dutch Settlements, on the West side of Delaware River aforesaid, which produced many Quarrels and Differences between the Dutch and Swedes that continued till near or about 1647 or 1648. About which time, it also appears by the said Records, that the Swedes, who then continued within the Claim of the

Dutch, became subject to the Dutch Government. And that, by the said Records, it further appears that the Dutch Possession and Government continued till 1664; at which time the said Lands on Delaware were reduced to the Subjection of the King of Great Britain. Has never heard or believes that Pennsylvania and the three lower Counties were ever under the Government of the Proprietor of Maryland, but has heard, by ancient Inhabitants of the said Counties, that some People of Maryland burnt and destroyed the Town of Lewes, formerly called Whorekill, the Truth whereof appears more plainly to this Deponent from a Letter, upon Record in the City of New York, which appears to be sent from Francis Lovelace, Governor of New York, to the Governor of Maryland, complaining that one Jones, with some others, as dissolute as himself, came to the Whorekills, rifled the Houses of the Inhabitants, and used them very ill; and likewise demanding satisfaction for said Injuries.

5TH BRANCH, proving where the true Susquehannah Indian Fort formerly stood, which is mentioned in some of the Proceedings in 1680.

James Hendricks aged 73. [Lib. C. fol. 743. Int. 131 fol. 744. and 132. fol. 748]

Knows Part of Cecil County in Maryland, and Lancaster, Chester, and Philadelphia Counties in Pennsylvania. Does not know the Bay of Chesapeak, but knows the River of Susquehannah. Part of which lies in Maryland, and Part in Pennsylvania. Has seen Indian Forts and Indian Towns; apprehends the Difference between an Indian Fort and Town is, that the first is an House or Number of Houses surrounded by Stakes of Wood and a Bank of Earth cast up, and the other is only a Number of Cabbins, built near each other, without being so surrounded. Says that he, near fifty Years ago, saw about 40 Indian Cabbins or Houses upon the upper Point of Land which forms the Mouth of Octorara Creek that runs into Susquehannah River aforesaid, within about Half a Mile of the said Creek and River; which Town had Stakes of Wood, and a Bank cast up round it. That the Affirmant was then told, by some of the Indians there residing, that they called the same Place Meanock, which they said, in English, signified a Fortification or Fortified Town. Has also seen the Ruins of another such Fortified Town, on the East side of Susquehannah River aforesaid, opposite to a Place where one Thomas Cresap lately dwelt. That the Land there, on both sides of the said River, was formerly Conajocula.

Further says that the Indians, who lived in the said last mentioned Town before he saw the same, were moved from thence, lower down (to) the said River to Conestoga. [Int. 132. fol. 748] Has known the said River Susquehannah, near fifty Years, and first became acquainted with it, by searching thereabout for Mines. That he knows the Place on the said River called Conestoga, and that near Susquehannah, near fifty Years, and first became acquainted with it, by searching thereabout for Mines. That he knows the Place on the said River called Conestoga, and that near 50 Years ago [that must be 1690 or after] he and another Person travelled to Conestoga, and this Affirmant understanding the Indian Language, enquired of several of the Indians there, whether any Christian People had ever travelled so high up the said River as Conestoga aforesaid? and was informed by them that there had not, but that this Affirmant and his said Companion were the first; for which reason this Affirmant does believe no Christian People had ever, before that time, travelled so high up the said River.

Two Reasons why the Upper Fort could not be the Susquehannah Fort, mentioned as agreed upon before the Lords of the Council in 1680.

1st, No Christain had ever been up so high in ten or twelve Years after that time, to know that there was any Fort there.

2d, The Land there was not Susquehannah Land, it was Conajocula, which is the Name of another Nation of Indians.

Ergo the lower Fort, at the Mouth of Octorara Creek was the Fort mentioned, before the Lords of the Council in 1680.

And that precisely falls in, and coincides, with my Lord Baltimore's running his Line presently after, viz. in 1683, from the Place where that Fort was, viz. the Mouth of Octorara Creek.

As to which Fort our Evidence continues very strong and clear.

John Hans Steelman [Lib. C. fol. 749. Int. 131, fol. 750.]

Indian Trader, aged 85, Is acquainted with the greatest Part of Maryland and Pensilvania, and is well acquainted with the Bay of Chesopeak and Susquehannah River, and some part of the said River lies in Maryland, and some part of it in Pensilvania. Has frequently seen both Indian Towns and Indian Forts, and says the Difference between an Indian Town and an Indian Fort is, that an Indian Town is a Number of Indian Houses or Cabbins built or set near together, and an Indian Fort is such a Town, fortified or surrounded with a Breast-work of Poles or Stakes of Wood set up, and a

Bank of Earth thrown up about them. Says that about forty or fifty Years ago, he saw an Indian Town wherein were Indians then residing, at the Point of Land at the upper side of, and about Half a Mile from, the Mouth of Octorara Creek, which runs into Susquehannah River aforesaid; And at the side of, or near to, the said Town this Deponent then also saw an Indian Fort, consisting of a great Number of Poles or Stakes of Wood set up, and a Bank of Earth thrown up about the same, as herein before described, which the said Indians then told this Deponent had been the Indian Fort. Says he also remembers that one Jacob Young, did, before or about the same time, shew this Deponent the Ruins of another Indian Fort which stood at about three Quarters of a Mile from the said first mentioned Fort, and where the said Jacob Young then also shewed this Deponent several dead Mens Bones, and told him that a great Battle had been fought there by the Indians.

Elizabeth Murphy aged 43 [Lib. C. fol. 754. Int. 131. fol. 755.]

Knows some Parts of Cecil and Baltimore Counties in Maryland, and some Parts of Lancaster, Chester, and Philadelphia Counties in Pensilvania, knows the River Susquehannah, but does not know the Bay of Chesapeak. Says Part of the River Susquehannah lies in Maryland and Part in Pensilvania. Has seen Indian Forts and Indian Towns, and that the Difference between an Indian Town and an Indian Fort is, that the first is inclosed with Wood, by some called Pallisadoes, and Banks of Earth, and that the latter is a Place where their Houses or Cabins are built, and they plant their Corn without such Inclosure. Says that upwards of 30 Years ago, she saw a Place on a Point of Land, between the Mouth of Octorara Creek that runs into Susquehannah River aforesaid and the said River, near to the Mouth of the said Creek, where, her Father Jonas Erskine, since deceased, informed there had formerly been an Indian Fort. That, when she saw the same, there appeared a large Bank cast up round it, and the Tops of the Pallisadoes that had been there appeared to be rotted off, and the Stumps of them remained in the Ground. And says that her Father, who lived at the same Place many Years, by the Licence of the Indians, informed her there had been a great Battle fought there, and shewed her the Bones of several Persons buried in the Cliffs of the Rocks, which he said were the Bones of Indians slain in that Battle. That the Indians who had formerly resided at the Place, were removed from thence when she saw it; and then lived at a small Distance from it. Says that her Father, likewise, at the same time, said to her this Affirmant, "That you may remember it, there, over the Creek (pointing to a Place

"over Octorara Creek aforesaid.) I saw the Lord Baltimore "set his Compass to run the Line."

Margaret Allen aged 39. [Lib. C. fol. 759. Int. 131. fol. 760.]

She knows Susquehannah River, and very well distinguishes between an Indian Fort and Town; And says that, near 30 Years ago, she lived with her Father Jonas Erskine now deceased, at a Place near the Mouth of Octorara Creek which runs into Susquehannah River, where the Remains of an ancient Indian Fort, a Bank, and some part of the Loggs with which it had been surrounded appeared. That she often heard her said Father, and several Indians, who resided very near the same Place, say that, at the same Place, there had formerly been an Indian Fort. And says that she saw there, great Numbers of human Bones, which her Father informed her, had been slain in many Battles fought there. And that she often, pickt up great Numbers of Stone Arrow Points, and Stone Hatchets there.

6TH BRANCH, Proving by whom the Lower Counties were possest, when Mr. Penn first went thither in 1682, and also the actual Delivery of Seizin to him then.

Samuel Hollingsworth aged 67. [Lib. B. fol. 57. Int. 28. fol. 59.]

Has known the Province of Pensilvania and County of Newcastle since 1682, but has not been well acquainted with the two Lower Counties of Kent and Sussex. Resided in Newcastle County from 1682 to 1701, and then removed to Chester County, where he has resided ever since. First arrived at Newcastle in 1682, and, then, understood from his Father and others, that the Plaintiffs Father was gone down to Maryland to meet Lord Baltimore; and, in a few Days after, saw him return, from thence as 'twas said, in a Riding Habit. At that time there were several Families of Swedes and Dutch, settled upon each side of Christiana Creek as high as the Tide Water flows, and, on the lower side of Brandy-Wine Creek; But there were few, or no Settlements back in the Woods, that he knew of, that being the Year when the Back Woods first began to be settled.

John Musgrove aged 73. [Lib. B. fol. 67. Int. 28. fol. 68.]

Came into the Country in 1682, and lived in Newcastle County four Years. Well remembers he first saw William Penn in the Year 1682 at Robert Wade's House in the Town now called Chester in Pensilvania, where the said William Penn then generally lodged, and Affirmant also.

Joseph Wood, Carpenter, aged 81. [Lib. B. fol. 4. Int. 28. fol. 5.]

Knew the Country now called Pensilvania before it was called

by that Name. Came from England and arrived in the Bay of Delaware about 1678, and the Counties Newcastle, Kent and Sussex, at that time, were governed by Sir Edmund Andros, who was then also Governor of New York under the Duke of York. Has resided in Pensylvania ever since. That William Penn arrived at Newcastle about 1682, where the Deponent then was at Work as a Carpenter, where he, then, saw Ephraim Herman and John Moll, make Livery of Seizin, of Newcastle aforesaid, in the Name of all the adjacent Lands that belonged to the Duke of York, to the said William Penn, by delivering a Turff and Twig from the Land, and Water and Mud from the River, by vertue of a Power from the Duke, as the Deponent understood, and which be heard read.

William Peterson of New Jersey, aged 92. [Lib. B. fol. 24. Int. 23. fol. 28.]

Came into the Country about 1658, and lived for 20 Years after on Christiana Creek about three or four Miles from the Mouth of it, and has ever since resided in New Jersey. Saw William Penn, at his first Arrival in the Country, which he well remembers, having seen some Persons, then make Livery of Newcastle, then called Sandhook, and the River, by delivering to him some Water and Earth.

NOTE, The Defendant has cross examined both the last Witnesses to many other Matters.

7TH BRANCH, to prove the Petition from the Inhabitants of the Lower Counties in 1682, to be united to the Province of Pensylvania, also an Indian Purchase then made, and a Copy of a Demand made upon Mr. Penn by Colonel Talbot, which was in 1683.

Patrick Baird, aged 47. [Lib. C. fol. 763. Int. 117. fol. 764.]

Has lookt on the Paper Writing B. B. which purports to be A Copy of a Commission given by Charles Lord Baltimore to Colonel George Talbot, to demand of the Plaintiffs Father all the Land on the West side of the River Skuylkill that lay to the Southward of the 40th Degree Northerly Latitude, according to an East Line run as is therein mentioned, with the Copy of the said Demand, and also a Copy of the Answer, given by the said William Penn, to the said Demand; which Copy of the Answer he believes is subscribed with the proper Name and Hand-writing of the said William Penn. And the Reason of his Belief is from the great Similitude of the said written Name, to the Name of William Penn, which he has seen subscribed to many other Papers, and which he was informed by divers

Persons, were the proper Hand-writing of the said William Penn. Says he was appointed Secretary of Pensilvania in July last, and by vertue of the same Appointment, did receive sundry Books and Papers which were lodged in the same Office, and, amongst those Papers, did receive the said Paper B. B. Has seen another Paper D. D. which he takes to be an Original Paper containing a Petition from sundry Persons formerly Inhabitants of the Counties now Newcastle, Kent and Sussex, to the Proprietor of Pensilvania, praying for a Union and Incorporation of the said Counties with the said Province, and he received the same at the same time, and in the same manner as the other. Has seen another Paper Writing F. F. and believes the same to be an Original Paper, purporting to be a sale of Lands from divers Indians to John Moll. And believes the Endorsement thereon, whereby, Moll released the same to the Plaintiffs Father, is an Original Writing also, and he received that Paper likewise, at the same time, and in the same manner, as the other.

8TH BRANCH, relating to the Names which the lower Counties have been called by, under the Dutch, the Duke of York and Mr. Penn, the making them into Counties in 1682, and their being called the Territories of Pensilvania.

Samuel Preston aged 75 [Lib. B. Fol. 312. Int. 8. Fol. 315.]

Has been acquainted with the County of Kent on Delaware about 60 Years. And with the Province of Pensilvania and the Counties of Newcastle and Sussex about 53 or 54 Years. The said County of Kent when he first knew it was generally called St. Jones's. Has heard that the said County (now Sussex) before he knew it, had been generally called the Whorekill. And that the said three Counties have frequently been called by the Names of the three lower Counties, and, The Territories of Pensilvania, both by William Penn and his Adherents, and also by other Persons in general.

Abraham Allman aged 50 [Lib. B. Fol. 236. Int. 8. Fol. 236.]

Was born in, and is pretty well acquainted with Newcastle County, has been at Philadelphia, and has been in Kent County, but knows nothing of Sussex County; and he never heard the said three Counties called by any other Name than as aforesaid.

James Logan aged 66 [Lib. B. Fol. 76. Int. 8. Fol. 92.]

That Delaware Bay and River, whilst they were under the Dutch, as he has collected from his Reading, were called South River; and the upper Part of the three Lower Counties was called Sandhook, and the lower, Whorekill; That, when the

Country called New Netherlands (of which the Lands on both Sides of the South River were Part) were taken from the Dutch, by the English, about 1664, according to the best Information he could ever obtain, the said Lands on both Sides of the said River, were generally called Delaware; And that, upon taking the said Country called New Netherland, the upper Part of the said three Counties, formerly called Sandhook, was called the County of Newcastle, by which Name the Town there built by the Dutch was and is known to this Day. And the lower Part, towards the Capes, still retained the Name of Whorekill; by which Name the small Town, also built by the Dutch, near the Cape was distinguished. That afterwards the said Two Districts, of Newcastle and the Whorekill, were divided into three Counties, by erecting one in the middle of them called St. Jones's. And that, sometime after, the Governor of New York changed the Name of the lowest Part of the said Land called the Whorekills, into that of Deal County. And after the Arrival of William Penn, Proprietor of Pensilvania, he, having obtained from the Duke of York a Grant of the said Counties situated on all the Western Side of Delaware from the Province of Pensilvania Southward, changed the Name of the County of Whorekill or Deal, to that of Sussex; and the Name of the said Town of Whorekill, to that of Lewes; and also changed the Name of the County called St. Jones's to that of Kent; and erected a Town therein, which he called Dover; but the Town and County of Newcastle still retain their former Appellation. And says that by an Act of Union made by the Representatives of the Province of Pensilvania and the said three Counties, the whole Government of the said Province and Counties was united, under one Legislative Assembly and so continued, under the Name of the Province of Pensilvania, and the Territories thereto belonging, from the Year 1683 to the Year 1704, from which time, hitherto, they have had separate Assemblies, He has not heard the said Counties called by any other Name than he has mentioned, unless to the Name of Delaware, some Persons might have added the Word Settlement.

Thomas Noxon aged 40 [Lib. C. Fol. 488. Int. 8. Fol. 496.]

Has been acquainted with Pensilvania and the three lower Counties about twenty Years. Has frequently heard the lower Counties called the Territories of Pensilvania, in Maryland, in Pensilvania, and in other neighbouring Governments, and has heard them called the three lower Counties. Ever since he has been well acquainted with them, they have been generally called the three lower Counties of Newcastle, Kent and Sussex. Has formerly heard the said Counties, by some ancient Dutch

people residing in New York, called by the Name of South and South River. And from the Dutch Records at New York has learnt that, from 1630 to 1664 that Part, now called the three Lower Counties was generally called South River, particularly that Part where Lewes now stands was called Whorekill; where Newcastle now stands, was first called Sandhook, afterwards Fort Casimier, and after that New Amstel. Has also learned from the English Records at New York, that, from the Conquest of New York and the said three Counties by the English in 1664, to near or about 1680, the said Counties were sometimes called South River, afterwards Delaware, Delaware River, and Delaware Bay, sometimes one, and sometimes the other, respecting the several Places in those Records severally meant, but, more particularly by the Names of Newcastle and Dependances, and Whorekill and Dependances. That, in or about 1680 the said Counties were distinguished into three Districts; and that Part now called Sussex County, still retained the Name of the Whorekill and Dependances; the Part now called Kent County, was, about that time called St. Jones's, and afterwards Deal; and the Part, now Newcastle County, was then called Newcastle and Dependances. (but does not remember that it appears from those Records that the said Counties were then called by the Name of Counties) which last mentioned Names they continued to bear till 1682, when it appears by the same Records that Mr. Penn purchased the Land composing the said Counties from the Duke of York. Has also learned from the Records, within the said three Counties, that, soon after the said Purchase, Mr. Penn erected the said Lands into Counties, by the Names of Newcastle, Kent, and Sussex, which Names they now bear.

9TH BRANCH, To prove Colonel Talbot's running a Line in 1683 from the Mouth of Octorara Creek by Order of Lord Baltimore, for a Division, called Octorara Line, Colonel Talbot's Line, and Lord Baltimore's Line; and afterwards building a small Loghouse of a few Logs, within and below that Line, for a Fort. (which themselves afterwards deserted) and that that Line was always regarded by Us; and for more than 40 Years by them also.

Samuel Preston aged 75 [Lib. B. Fol. 312. Int. 25. Fol. 335.]

Heard of one Colonel George Talbot who lived in Maryland, and had considerable Interest with, and was a great Favourite of, the late Lord Baltimore, and bore a great Sway in Maryland; but whether he held any Post or Place there knows not.

John Musgrave aged 73 [Lib. B. Fol. 67. Int. 25. Fol. 74.]

Knew Colonel George Talbot, and has heard that he lived in Maryland.

Samuel Hollingsworth aged 67 [Lib. B. Fol. 57. Int. 25. Fol. 66.]

Knew Colonel George Talbot, and has seen a House, on the West Side of the Head of Elk River, which he was informed, was the House he lived in.

The same [Int. 23. Fol. 61.]

That one Evening, in or about 1683, Colonel George Talbot of Maryland, with 4 or 5 others, came to the House of the Affirmant's Father, and requested Lodging for that Night, and being welcomed into the House, upon Conversation between his Father and Talbot, concerning the Business Talbot was then about, the Affirmant heard Talbot acquaint his Father, that he was then, by Lord Baltimore's Orders, running a Line to divide the Province of Maryland from the Province of Pennsylvania, which was to be the North Boundary of Maryland: that he had begun the said Line, at the Mouth of Octorara, and had, and was, to run it, from thence due East to Delaware. That they returned to his Father's House the next Night, and then the said Talbot informed his Father that they had finished the said Line. That the Affirmant the next Day saw a Line of marked Trees, which he then, and many Times afterwards understood, was the Line run by the said Talbot, and which he saw frequently after, and so well remembers that he believes he could shew its Course at this Time; and understood that it ended a little below the Mouth of Naaman's Creek: That the said Line was sometimes called Talbot's Line, sometimes Maryland Line, but, generally, Lord Baltimore's Line. Has heard there was a Fort built. (soon after running the said Line) by the Order of Lord Baltimore, some Miles to the Southward of the said Line, near Christiana Bridge, in order to keep Possession. That he never saw the said Fort, but understood it was a little Loghouse, that hardly deserved the Name of a Fort.

John Musgrave, aged 73 [Lib. B. fol. 67. Int. 23. fol. 70.]

That about 1683, Colonel George Talbot, with some others, came to the House of Valentine Hollingsworth, the Affirmant's Master, and requested Lodging for a Night which being granted, upon Discourse between Talbot and the Affirmant's Master. the said Talbot, in this Affirmant's Hearing. told him he was running a Line from the Mouth of Octorara to Delaware River. by Order of the Lord Baltimore, for a Division Line between Lord Baltimore and Mr. Penn. That the said Talbot and his Company departed next Morning, and returned to the Affirm-

ant's Master the next Night; and then, said he had finishit the said Line. That very soon afterwards he saw a Line of markt Trees, which, he was informed, stood in the Line run by the said Talbot, and were markt by him, which he knew a long time afterwards. Does not know where the said Line ran into Delaware River, but has heard, 'twas a little below Naaman's Creek. Does not know, or has heard, that the said Line was run by any Authority or Direction from William Penn.

Samuel Gellibrand [Lib. A. fol. 91. Int. 9. fol. 120.]

Proves an Exhibit Botra No 20. to be a true Copy of an Original Letter from William Penn, to the Committee for Trade and Plantations remaining now in their Office, dated 14th August 1683, wherein Mr. Penn relates some IntervIEWS and Disputes he had already had with Lord Baltimore in America.

And now came on the very busy Contest at the Council-Board, when there were so many Hearings in the Years 1683, 1684, and 1685, between Lord Baltimore and Mr. Penn.

Samuel Gellibrand [Lib. A. fol. 91. Int. 10. fol. 122.]

Proves an Exhibit, being Copies of Petitions and Orders, &c. in May and February 1683, and August 1685, remaining now at the Board of Trade. That Exhibit being markt Botra, No 21.

The same [Int. 11. fol. 125.]

He proves the Minutes of the Proceedings, and Acts of the Committee, during those three Years, from 17th April 1683, to 7 November 1685. It is Exhibit Botra No 22.

NOTE—During that long Contest, Pensilvania being in its Infancy, and the Proprietor attending those Hearings, Lord Baltimore took the opportunity, to build, in that Wilderness, unsettled Country, what is now called a little Fort; of which we shall make good use, after we have shewn that Pensilvania, and indeed both Sides, paid a great regard to that ex parte Octoraro Line, so run by Lord Baltimore's Order in 1683.

Samuel Hollingsworth, aged 67. [Lib. B. fol. 57. Int. 24. fol. 65.]

Has heard that the Part of the Line which he has before mentioned, which was markt (towards Octorara) was regarded by the People inhabiting on both Sides of it, as the Division between the Provinces of Maryland and Pensilvania, but that Part thereof which run thro' Newcastle County (towards Delaware) he never understood, was, in any sort, regarded as such a Division Line.

John Musgrave, aged 73 [Lib. B. fol. 67. Int. 24. fol. 72.]

That the Inhabitants of the Province of Pensilvania and Maryland, for a long time after running the said Line, had so

great a regard to the same, that no Ineroachments were made beyond it, on either side: But, of late, he has heard, some En-eroachments have been made by the Maryland Officers, but does not know it, living far from thence. Does not know that the Proprietors of Pensilvania, their Agents, Commissioners, Magistrates, Surveyors or Officers, have transgress the said Line, or that any Lands have been granted, by or under their Authority, or any Jurisdiction exercised, to the Southward of that Line.

John Ball, aged 69. [Lib. B. fol. 15. Int. 22. fol. 16.]

Knew the Town called Newcastle, about 1677, or 1678, which was then settled by Dutch People, and called Sandhook, which, with the County of Newcastle, was then governed by Governor Andros, the Governour of New-York under the Duke of York. That about 54 Years ago (1686) his Father shewed him a small Log-house standing near Christiana Bridge, on the West Side of Christiana Creek, about 5 Miles from Newcastle, and told him that was Talbot's Fort, and that it was kept by Talbot's Men. That the said Fort was built amongst the Inhabitants of the County of Newcastle, who owned Mr. Penn for their Proprietor and Landlord, several of whom lived between the said Fort and the Province of Maryland. That this Deponent was informed the Land whereon the Fort stood, was taken up, before the Fort was erected, by a Company under the York Government; and heard one Thomas Ogle and his Brother John, say it was their Land, and that they claimed under their Father who was one of the Patentees; but knows not, nor ever heard, that it was taken up under the Government of Maryland. That the said Fort was about thirteen or fourteen Feet long, and about 10 Feet wide, covered with Slip-Wood, and could not cost, in the Deponent's Judgment, above three or four Pounds. That the Design of the Lord Baltimore, as he has been informed, in building and keeping Men in the said Fort was, to keep Possession of the Place, which he claimed. That about six or seven Irish Men, esteemed Roman Catholicks, kept the Fort, who behaved peaceably towards the Inhabitants, amongst whom they frequently went. That he knew of no Inhabitants near the said Fort, or within the County of Newcastle, who owned the Lord Baltimore's Authority at that time: But has heard there was a Tract of Land surveyed under the Lord Baltimore, within three Miles to the Westward of the said Fort, which was unsettled. Believes the Inhabitants of Newcastle County could easily have dispossess those who kept the said Fort; but they neglected to do it, because the Men behaved themselves quietly and civilly to them. That the said Men had sometimes Plenty of Provisions, but were generally in Want,

which he knows, by their frequent going down to Maryland, and there pressing Provisions. That they lived in the Fort, to his Knowledge about two Years, and has heard they lived, in all about three or four Years, and left it upon some of their being Frost-bitten, since which time no Person, pretending Authority from, or owing the Jurisdiction of, Maryland, was ever in possession of the said Fort, or the Land thereabout, to the Knowledge of the Deponent.

**John Garretson, aged 77. [Lib. B. fol. 7. Int. 22. fol. 8.]*

Has known the County of Newcastle, as long as he can remember. Says it was at first, under the Government of the Governour of New-York, and when his Power expired, has been under the Government of Mr. Penn, the Father of the Plaintiffs, and his Descendants. That upwards of 50 Years ago [and he was examined, and so were all the American Witnesses, in the Year 1740] there was a Fort built, and kept, by Lord Baltimore on the North Side of Christiana Creek, about five Miles distant from Newcastle. That there were but few Families settled thereabouts; at that time, Four of which, besides his own, lived between the said Fort and the Province of Maryland, but more that lived between the Fort and Maryland he can't certainly remember, which Families own'd Mr. Penn for their Proprietor and Landlord. That the Land, whereon the said Fort was built, was taken up, before that time, for the Use of one Ogle, either under the Government of New York or the said William Penn, but is uncertain which. That the said Fort was about 14 or 15 Foot long, and built of Logs, and covered with Clap-boards, and could not cost above two or three Pounds, and was fronted with a few Palisadoes about the Height of a Man. Believes the Design of Lord Baltimore in building the Fort, was to take Possession of the Place. That the Fort was kept, sometimes by one or two, but never above 7 lusty Irish Men to the best of his Remembrance, who lived very peaceably with the Inhabitants. That they were sometimes in the Fort, at other times abroad, but one or more always remained in the Fort. Does not remember any Persons who lived near the Fort, or in the County of Newcastle at that time, owned the Lord Baltimore's Authority. Believes the Inhabitants of the same County, who owned Mr. Penn's Government, could easily have dispossessed the People in the Fort of the same, if they had resolved so to do; but that they declined so doing, because they lived peaceably amongst them. That the People in the Fort were chiefly supplied with Provisions from Maryland, and sometimes lived plentifully, at other times in Scarcity, and stayed there between 4 and 5 Years. That the leaving the Fort was

occasioned by the Men's getting fuddled, and lying out in the Cold, whereby some were froze to Death, and others lost their Limbs. Since which time, to the Knowledge of the Deponent, no Person pretending Authority from, or owning the Jurisdiction of, Maryland, has been in the Possession of the said Fort, or any Lands thereabouts. And the Reason of this Deponent's Knowledge of what he has declared on this Interrogatory is, that he lived very near to the said Fort at the time of its Building and Settlement, and was frequently in it.

NOTE, Both these last Witnesses about the Fort, the Defendant has cross-examined to their being interested in the Event of the Cause only. But the Defendant himself has examined a great many Witnesses (in Number) many of which speak only to this Fort, and to another Action, about burning the Whore-kills; which, if he had had Shame or Humanity in him, he should rather have concealed. And his own Witnesses, prove every Fact, above spoke to about the Fort.

John Taylor, aged 43, the Defendant's own Witness, but cross-examined by us [Lib. C. Fol. 648. Int. 23. Fol. 649.]

Says, that near 20 Years ago, his Father, was Surveyor of Chester County, shewed this Witness a Line of markt Trees, running Eastward from the Mouth of Octoraro Creek, on Susquehanna River, and said it was called Lord Baltimore's or Colonel Talbot's Line, and that it divided Maryland from Pennsylvania. This Witness's Father then said, he had been informed by an ancient Man, an Inhabitant of Maryland, that the said Line was run by Colonel Talbot, by the Order of Lord Baltimore, for a Division-Line as aforesaid; and that he this Affirmant's Father had written Orders or Directions from the Commissioners of Property in Pennsylvania, not to survey Lands to the Southward of that Line. The Affirmant's Father then also said that he had run the said Line Eastward, from the Mouth of the said Creek upwards of 20 Miles. Says that the said Line, for the length of six or seven Miles was afterwards shewn to him by several ancient People, who informed him that they attended Colonel Talbot in 1683, for several Miles, when he run and markt the said Line. About 15 Years ago the Affirmant having occasion to enquire, concerning the Division between the said Provinces, the said Line, near the Mouth of Octorara Creek aforesaid, was shewn to the Affirmant by one Joseph Askew, [Note, two other Witnesses prove Askew to be dead] who resided thereabout, and informed this Affirmant either that he saw the said Line run, or, had been informed that the same was run, by Colonel Talbot, and 5 or 6 Gentlemen from Maryland, by Lord Baltimore's Order, and was gen-

erally called by the Inhabitants there Lord Baltimore's Line. And that, afterwards the said Jonas Askew rid many Miles along the Line with this Affirmant, when the Marks on the said Trees were very clear and apparent. Says also that, about 15 Years ago, he was Sheriff of Chester County, part of which, to the Southward, joins to the Northern Part of Cecil County in Maryland, and about that time being in Company with John Hack, who was then Sheriff of Cecil County, they together saw the said Line which as it was said was run and markt by Colonel Talbot, and they both called, and esteemed it their Division-Line.

James Logan, aged 66.] Lib. B. Fol. 76. Int. 23. Fol. 133.]

That in the Summer of 1700, the Proprietor William Penn took a Journey into Maryland, and, in his Return, was attended by divers Gentlemen of Maryland in his Journey from thence, up the River Susquehannah, which Gentlemen having accompanied him as far as Octorara Creek, or River, stopt there, in the Ford as this Affirmant was soon after credibly informed by some of the Pensilvania Gentlemen, and there took leave of him, with Expressions to this purport, viz. Now we have waited on your Honour, into your own Province, and must desire leave to return; To which the said Proprietor answered, I hope I have been in it some time ago; which Information led the Affirmant to enquire into the Reason, and he was assured, thereupon, that the Lord Baltimore had in 1683, come up to the Mouth of the said Creek or River of Octorara, and having made some Observations there, had directed Colonel George Talbot to proceed from thence, Eastward to Delaware River, and to mark on the Trees a Line of Division; and that the Affirmant hath been assured, by divers Persons, that they saw the said Colonel Talbot and his Company in their said Journey to the side of Delaware River, and had frequently seen divers of the said markt Trees, and traced the Line from thence, Westward for some Miles. That, upon the Truth of this Information the Affirmant so intirely depended, that being Secretary and Commissioner of Property, upon the Application of Cornelius Empson, William Brown, Andrew Job, and divers others, who petitioned for a Grant of that Tract of rich Land now called Nottingham, at the Affirmant's Instance it was wholly declined, till such time as the Applicants had produced unquestionable Evidence, that the most Southern Part of the said Tract lay at least the Distance of one Mile to the Northward of the said Line, run from the Mouth of Octorara as aforesaid; upon which the said Tract was granted to them. That the Affirmant never heard the said Line disputed for a Boundary,

till by a Letter from Charles Carrol then Agent for Maryland, the Affirmant found the said Agent did not own the said Line as a peremptory Division which induced the Affirmant to enquire further into the certainty of the said Boundary; and in order thereunto he found a Copy of a Writing left by the said Colonel Talbot at Philadelphia, with Nicholas More President, in the Absence of the Proprietor William Penn, who was then at New York, containing a Commission from the Lord Baltimore to the said Colonel Talbot, dated the 17th of September 1683, requiring him to repair to Schuylkill, and there demand, from the said William Penn, possession of all the Lands on Delaware, to the Southward of the said markt Line, as also a Demand in writing dated the 24th of the same Month, made by the said Colonel Talbot, in pursuance of the said Commission; as also a Writing signed by the said Wiliam Penn, dated the 31st Day of October then next following; which being upon the same Paper with the aforesaid Copies, being, as the Affirmant is well assured, signed by the said Proprietor's own Hand, immediately induced him to believe, and the Affirmant does firmly believe that the said Copies of the Lord Baltimore's Commission, and of the said Colonel Talbot's Demand, are true, genuine, and Authentick; and the Affirmant also procured sundry other Vouchers for the Truth of the said Line; but, as the Affirmant is not immediately furnish'd with any of them, refers to them when produced. And further saith, that he heard divers times from Henry Hollingsworth, who formerly was Clerk, and Surveyor in Chester County and is long since dead, That one of those who were employ'd to run the said Line, and afterwards lived in the Town of Chester, had frequently affirmed in his hearing, that after the first day's Journey, the said Colonel Talbot made a Sett off to the Northward, before he resumed the said Line on an Eastern Course.

James Logan, [Lib. 76. Int. 24. fol. 142.]

Saith there never was, to his Knowledge, and he has all the moral Certainty that can be had, in such case, that there never was any Grant or Survey, made by the Proprietors of Pensilvania, or under their Authority, of any Lands, more or less, neither have they themselves, or any Person by their Authority, exercised any Acts of Government to the Southward of the Bounds, Limits or Line of Division aforesaid, and to the Westward of the Limits of the three Lower Counties aforesaid. And saith, that after the said Settlement of Nottingham and the Settlers thereof, by their large Improvements, had rendered themselves considerable, the Lord Baltimore's Agents for Maryland, (as the Affirmant conceives) beginning to think these Parts worth their Notice, ceased not to claim them; in so much, that

in the Year 1722, not only Isaac Taylor the Surveyor of Chester County aforesaid, was taken, by a Warrant from the Justice of Maryland, for surveying some Land situate to the Northward of the said Line, but also Elisha Gatchell, going to visit the said Surveyor, and to inquire into the Cause of his being so apprehended, was likewise seized, and both the said Taylor and Gatchell were committed to the Custody of the Sheriff of Cecil County, and sometimes to the Prison it self, and were much harrassed for near one whole Year, being removed thence to the supreme Court of Annapolis, and there, at length acquitted; but the Affirmant having taken a Voyage to London. in the Fall of the Year 1723, and making a Complaint thereof to Charles Lowe, then the Lord Baltimore's Agent in London, the said Lord and Hannah Penn, Executrix of the late Proprietor William Penn's Will, entred into an Agreement dated the 17th of February 1723, that the Possessors of Lands in both Provinces should remain quiet and unmolested, during the Space of 18 Months, in which time it was hoped, the Boundaries would be effectually settled: of which Agreement signed by the Lord Baltimore himself, and the said Hannah Penn, jointly with Henry Goldney and Joshua Gee two of the Trustees for the said Province of Pensilvania, and witnessed by Simon Clement, the said Charles Lowe, and the Affirmant, three Originals of the said Agreement were executed, on each side; which Agreement being transmitted to the respective Governors of both the said Provinces, with Orders on each side, that the same should in puruance of the said Agreement, be proclaimed in each Province; the said Orders were accordingly obeyed in the Province of Pensilvania, and were in general observed in both Provinces, till, after the Arrival of Governor Ogle in Maryland, in the latter End of 1731, notwithstanding he well knew that the Lord Baltimore had entered into an Agreement with the Proprietors of Pensilvania, for putting a final Period to all their Disputes, of which he, by his Letter, accordingly advised Colonel Gordon, then Governor of Pensilvania, yet he renewed the former Disturbances.

John Taylor, aged 43. [Lib. C. Fol. 648. Int. 24. Fol. 653.]

Ever since he knew the said Line, as far as he knows, or has heard and believes, the Pensilvania Inhabitants in general, and the Proprietors of that Province, their Agents, Commissioners, Magistrates, Surveyors and Officers, have always esteemed, regarded and observed the said Line as a Division between the Provinces of Maryland and Pensilvania, and neither the Pensilvania Proprietors, nor any under their Authority, did survey any Lands, or exercise any Acts of Government, to the Southward of that Line, to the Knowledge or Belief of this Affirmant.

That by conversing with several of the Inhabitants of Maryland before 1726, or 1727, always heard and believes that the People of Maryland, till about those Years, thought the said Line was the Division of the same Provinces. But has heard and believes that since those Years, Lands have been surveyed under the Proprietor of Maryland, and Acts of Government have been exercised by his Magistrates and Officers, to the Northward of the said Line.

10TH BRANCH, about the Indian Purchases made by the Dutch and Swedes, and Mr. Penn, and of his exercising the Government of the Lower Counties from 1682, to 1702.

James Logan, aged 46. [Lib. B. Fol. 76. Int. 12. Fol. 121.]

That the Dutch, as he is well assured, and, as he believes, the Swedes, having purchased from the Indians, the greater Part of the Lands below Duck Creek in the said three Lower Counties, the said William Penn's Commissioners in 1685, for a large Consideration, made a very extensive Purchase of Land from the Indians, from the said Duck Creek, as far North as Chester or Upland Creek, which is reputed by Travellers, no less than 60 Miles, which last mentioned Place, in common Estimation, lies not above five Miles to the Northward of the Northern Boundaries of the said Counties. And saith, that only the said William Penn, and his Deputies, exercised the Government in and over the said Province of Pensilvania, and three Lower Counties of Newcastle, Kent and Sussex, from 1682, to 1702, (excepting for some time in the Years 1693 and 1694, to the beginning of 1695, when King William and Queen Mary, by Commission to Benjamin Fletcher Esq; then Governor of New York, authorized him to take the said Government under his Care, alledging for a Reason the Proprietor's absence from the same; but by other Letters Patent, dated in August 1694, restored the Government of the said Province and Counties to the said William Penn and his Heirs as before, and saith William Penn, only made two Voyages from England to America between the Years 1680 and 1703.

11TH BRANCH, Proving Mr. Penn's constant Possession as Landlord and Proprietor ever since 1681 and 1682; his granting out of the Lands; appointing great Numbers of Collectors and Receivers of Quit-Rents in all the Lower Counties, and receiving Quit-Rents.

Samuel Preston, aged 75. [Lib. B. Fol. 312. Int. 9. Fol. 317.]

Has lived in the three Lower Counties and Pensilvania about 52 Years, was Sheriff of Sussex about 1690, and in some little

time before or after, a Justice of Peace for that County. In 1700 was a Councillor for that County by the Election of the People. Has been a Member of the Governor's Council for the Province of Pensilvania above 20 Years last. Has been Treasurer of that Province about as long. Has been an Alderman for the City of Philadelphia about 30 Years, was Mayor of that City in 1711. That ever since he has known the said three Lower Counties and the Province of Pensilvania, they have been in the Possession of the Duke of York and William Penn, and those claiming under him, as Proprietors and Landlords of the same, successively. When he first knew Kent County, it was the Practice of the County Courts in the said Lower Counties, as he was informed and believes, to grant Warrants and Survey Lands, and thereupon Patents were granted for those Lands by the Government of New York; but that, always after William Penn obtained the Government of the same Counties and Province of Pensilvania, hitherto, he the said William Penn, and those claiming under him, have, successively, appointed the Officers, Commissioners, and Managers of Property, in the said Province and Counties. And never knew that the Defendant, or his Ancestors, ever were in Possession of the said Province of Pensilvania, or the said Counties, as a Proprietor or Landlord of them. Or that the Officers, Commissioners or Managers of Property for the Lord Baltimore ever granted out any Lands or Plantations within the same Province or Counties. He has known that William Penn deceased, and the Widow Hannah Penn, Mother of the Plaintiffs (likewise deceased,) by Virtue of the said William Penn's Will, and the present Plaintiffs, have been severally and successively in the Possession of the same Province and Counties, as Landlords, Landladies, and Proprietors of the same Province and Counties; and has heard and believes that William Penn was in the Possession of the Province of Pensilvania from 1681, till this Witness first knew the same Province. That he knew the said three Lower Counties before 1682. And since that Year, the said William Penn, and those claiming under him, have, always been in Possession of the same. This Witness never held any Office which gave him an opportunity of inspecting Records, and thereby becoming acquainted with Grants and Titles of Lands in the said Province and Counties, but has occasionally, seen several Grants of Lands in the said Province and Counties, which, since the Year 1682 were all made by the said William Penn, and those claiming under him; and hath never seen any Grants for Lands in the same Province or Counties from or under the Lord Baltimore, or any of his Ancestors.

NOTE.—The Defendant has cross-examined Mr. Preston to a whole Sett of Interrogatories.

James Logan, aged 66. [Lib. B. Fol. 76. Int. 9. Fol. 97.]

From 1701 has held the several Offices of Secretary, Commissioner of Property, General Receiver of the Proprietors Dues, and one of the Governor's Council, and continued in them many Years. On Governor Gordon's Death in 1736, he was, for near two Years, till the Arrival of the present Governor, President of the Council, and as such, had the Administration of the Government in Pensylvania, and then, divested himself of all Offices in the said Government. That for seven Years from the Year 1716, he was President of the Court of Common Pleas for Philadelphia County; and from the Year 1731, for 5 Years, he was Chief Justice of the supreme Court of that Province, which he was obliged to lay down, upon his coming to the Administration of the Government. That ever since he knew the said Province and three Lower Counties, the said William Penn and his Descendants, have always been in Possession of the same Province and Counties as Proprietors and Landlords thereof, except when the said William Penn was obliged to vest the same in Trustees for the Payment of a considerable Debt contracted by him; during which time the said William Penn, his Trustees and Descendants, have successively appointed the Officers, Commissioners, and Managers of Property, for granting out Lands in the said Province and Counties—he has—neither heard, nor does believe, that Lord Baltimore, or his Ancestors, ever had any Possession or Management, in or of the said Province, or the said Counties, or any part of them, except by an Intrusion and forcible Entry made, in or about 1685, by some of Lord Baltimore's Officers, upon the Land of one John Ogle, near Christiana Creek, of which the said Ogle had been long in Possession, and building a small inconsiderable Fortress there. Says he is very sure the said William Penn only, was always in Possession of the Province of Pensylvania from 1681, till this Witness first knew that Province, and also of the said Counties from the Year 1682, till this Witness's first Knowledge of them. He has seen several of the Records of the said Province but it was never his Business to inspect any of them. That as Secretary as aforesaid, he had occasion, ever since the Beginning of the Year 1700, to inspect great Numbers of the most ancient Grants as well as others, and Titles of the Tenants and Occupiers of Lands in the Province of Pensylvania and the said Counties, made before the Year 1700; and never saw one Grant, during that time, of any Lands in the said Province or Counties, from Lord Baltimore, or any of his Ancestors, or from any other under his or their Authority. The most ancient of all which Grants that he has seen, were from Mynheer Stuyvesant, who was Governor for the Dutch at

the time when the Lands were under their Government; and after the Year 1664, from Richard Nichols, Francis Lovelace, or Sir Edmund Andros, the several Governors at New-York; and, from the Year 1682, from the said William Penn or his Commissioners. That during the Year 1700, and to November 1701, the said William Penn signed all the Grants of Lands in the said Province and Counties; and that from November 1701, this Witness, as one of the Commissioners of Property for William Penn and the Trustees aforesaid, signed almost every Grant for Lands in the said Province and Counties, until the Death of the said William Penn; and from his Decease this Witness, being duly authorised for that purpose, continued to sign all the Grants that were made of any Lands in the said Province or Counties, until the time the Plaintiff Thomas Penn arrived in the Province in 1732; the other Commissioners of Property surceasing to act during the Witness' Absence on a Voyage to England. That the Number of those Grants and Titles was great, but he never kept any Account of them.

NOTE—The Defendant cross-examined this Witness, only as to his being interested in the Event of the Cause, or holding any disputed Lands, which he, in the most precise, full and absolute Terms utterly denied.

These two Persons, having long known the Country, and gone thro' all these publick Offices, were the properest Persons to know these Matters, but what they say in General, and at once, is no more than what is confirmed, peacemeal, by a Cloud of other Witnesses, (even the Defendant's own Witnesses,) and by the Records themselves.

**James Steel, [Lib. C. Fol. 559. Int. 127. Fol. 625.]*

Has known Pensilvania and the three lower Counties above 32 Years. He was and acted, for many Years, as a Justice of Peace in Kent County. And was, afterwards one of the Justices of the Supreme Court for the said three Counties. About that time was also appointed and continued for many Years, Receiver of the Quit Rents and other Revenues accrewing to the Proprietors of Pensilvania in the said Province, and also in the said three Counties. For about seven Years past has acted as Receiver General under the Pensilvania Proprietors for that Province and the said three lower Counties. Ever since his first Knowledge of the said Province and Three Counties, Mr. Penn and his Family and Descendants, or Persons under their Authority, have all along, to this present Time, been in Possession of the said Province and three Lower Counties as Landlords and Proprietors thereof, and have all along appointed the Magistrates, Officers and Commissioners of Property for the granting of

Lands within the said Province and Counties. And never knew Lord Baltimore, or any of his Ancestors, in Possession of the said Province and Counties as Proprietor or Landlord thereof, since this Affirmant knew the same; nor did he ever know the said Defendant, or any of his Officers, Commissioners or Agents, to grant out the several Lands within the said Province and three lower Counties, or any of them. And has heard and believes the said Mr. Penn was always in Possession of the said Province and three lower Counties, from 1681, as Proprietor or Landlord thereof, unto the time he first knew the same.

Benjamin Eastburn aged 44. [Lib. C. fol. 678. Int. 128. Fol. 1714.]

Has seen in the Office of Surveyor General of Pensilvania, and the three Lower Counties, (which he now holds) Great Numbers of Original Warrants and Surveys for the granting Lands in the said Province and Counties; which all appear to be made either under the Government of the Province of New York, or by Courts who acted under the same Government, or under the Authority of Mr. Penn deceased, formerly Proprietor of Pensilvania, or those who have claimed under him; but never did see any Grants or Titles for or to Lands in the same Province or Counties, which were made or derived under the Defendant or his Ancestors, or his or their Commissioners or Officers. That by Warrants now lodged in the said Office, it appears that Mr. Penn and those claiming under him, before June 1735, have granted near and about 330,000 Acres of Land, lying in the said Counties of Newcastle, Kent and Sussex. And that the Dutch and English Governments, at New York aforesaid, had granted very large Quantities of Land there, before Mr. Penn's Right to the said Counties, to the amount of near 100,000 Acres as he believes, under which same Grants divers Persons, there residing, claim and enjoy those Lands to this Day.

** James Steel [Lib. C. Fol. 559. Int. 128. Fol. 629.]*

Has seen several Grants for Lands within Pensilvania and the Lower Counties, not only amongst the Records kept at New York, but also in the Hands of several of the Occupiers of such Lands, bearing Date before 1681, and made by the Governor of New York. And that under some of those Grants some of such Occupiers as he believes still continue to hold their Lands, under the Plaintiffs, but the greater Number of the Occupiers and Claimants of the Lands under such old Grants, have since renewed their Grants for such Lands with and under Mr. Penn and his Descendants, and those claiming under him. He has also seen great Numbers of Grants and Titles of Lands within the said Province and three lower Counties, bearing Date since

1681, as well upon and amongst, the several Records kept in and for the said Province and Counties, as in the Hands of several of the Owners and Occupiers of such Lands. And says that all the same Grants appeared to him to have been made by and under the Authority of Mr. Penn, his Family and Descendants, and does not remember ever to have seen any Grants for Lands within the said Province and three lower Counties, which were made by or under the Defendant, or any of his Ancestors, or his or their Commissioners, Agents or Officers for Property. Says that by and from his inspecting and examining the several Memorials, Minutes and Entries of Lands granted within the said three lower Counties of Newcastle, Kent and Sussex, which are kept in the Office of the Surveyor General for the said Province and three lower Counties, he computes and believes there were near or about 100,000 Acres of Land within the said three lower Counties granted before 1682, by or under the Authority of those under whom William Penn claimed; and that, since that Time, and before June 1735, there have been near or about 328,000 Acres of Land, within the said three lower Counties, granted by Mr. Penn, his Family and Descendants, and those claiming Authority under him and them. Says that by and from several ancient Books, Papers and Memorials, now in his Custody as Receiver General under the Plaintiffs as aforesaid, he finds and believes, that, soon after the Grants of the said three lower Counties to William Penn. John Hill, Samuel Preston, William Clarke, and Thomas Fisher were appointed by or under William Penn to be his Receivers and Collectors of Rents and Quit Rents, from the Tenants and Occupiers of Land in the said County of Sussex; and that George Martin, William Berry, Samuel King, and William Rodeney, and sometimes the said William Clarke, were also appointed by or under the said William Penn to be his Collectors and Receivers of such Rents in the said County of Kent. And also that Edward Gibbes, George Dakeyne, Cornelius Empson, and John French, were also appointed by or under the said William Penn to be such his Collectors and Receivers in and for the said County of Newcastle, And that James Atkinson, was in like Manner appointed to receive such Rents in all the said three Counties. All and every of which said several Collectors and Receivers this Affirmant finds by the same ancient Books and Papers, and believes, did actually receive, divers and considerable Quit Rents from the then several Tenants and Occupiers of Lands in each of the said three Counties, for the Use of the said William Penn. And says that, since his being appointed Receiver and General Receiver as afore set forth he has also received, from time to time, from the Tenants and Occupiers

of Lands in each of the said three Counties divers and considerable Quit Rents for the Use of William Penn, his Family and Descendants. And says he believes and is well satisfied, that all and every of the said Tenants or Occupiers of Lands, within the said three Counties, which are herein before mentioned to be held under the said ancient Grants from the Governor of New York as aforesaid, have at one Time or other, paid some Part of their Quit Rents, for such Lands, to, or to the Use of the said William Penn, his Family or Descendants, or some of them.

James Logan, aged 66. [Lib. B. fol. 76. Int. 10. fol. 106]

That William Penn did, from time to time, appoint the several Officers for collecting the Quit Rents from the Tenants and Occupiers of Lands in the said three lower Counties; and that no other Officers or Collectors were ever appointed for that purpose by or under any other Person but the said William Penn and Persons under his Authority, from the time of the said William Penn's first becoming Proprietor of Pensilvania and the said three Counties, as this Witness ever heard or understood. And says there has been considerable Quit Rents received from the Tenants in the said three Counties, by the said Officers and Collectors so appointed by the said William Penn and under his Authority as aforesaid. Says the Names of some of the said Collectors of Quit Rents so appointed by the said William Penn and under his Authority, were Samuel Land, Edward Gibbs and George Dakeyne, with several others, for the County of Newcastle; and William Clarke, principally, for the Counties of Kent and Sussex; But there were divers others whose Names do not at present occur to his Memory.

12TH BRANCH, That constant Annual Assemblies, have been held, for the Lower Counties, under Mr. Penn from 1682; Courts of Justice always held there, under his Authority; And none of the Inhabitants of those Counties ever elected into the Maryland Assembly.

Samuel Preston, aged 75 [Lib. B. fol. 312. Int. 30. fol. 337.]

Says that upon Proprietor Penn's first coming to Pensilvania and settling the Constitution thereof, and of the three Lower Counties, the Members or Representatives, who were elected by the People in and for the Province, and in and for the said Counties, sate in and made but, one united House of Assembly under the Government of the said William Penn; And that the said three lower Counties were thereupon called the Territories of Pensilvania; But, some time after Mr. Penn's second De-

parture from Pensilvania. the Representatives of the People divided, and sate in, or made two separate Houses of Assembly, one for the Province of Pensilvania, and the other for the three lower Counties; which were, from that time, called the three lower Counties of Newcastle, Kent and Sussex on Delaware. Doth not know how many Assemblies have been held in the said Province and Counties, but says the same have been, always, held under William Penn his Family and Descendants. Says there have been Courts of Judicature held in the said three lower Counties ever since his being acquainted therewith, which have always been, and still are, held under the said William Penn his Family and Descendants, and not under the Defendant or his Ancestors, or any other Person or Persons whatsoever.

James Logan, aged 66. [Lib. B. fol. 76. Int. 30. fol. 154.]

Says that from 1682 there have been, to the best of his Knowledge, constant Annual Assemblies, and also Courts of Justice, held, down to this time, in Pensilvania and the said Lower Counties, under the Authority of William Penn and his Descendants. And never knew or heard of any Assemblies or Courts of Judicature whatsoever, held in the said Province or the said three lower Counties, or either of them, under the Authority of the Defendant or any of his Ancestors.

John Ball, aged 69. [Lib. B. fol. 15. Int. 30. fol. 22.]

Has known the Lands now called Pensilvania 64 Years, and the County now called Newcastle sixty two Years, in which County he has lived 54 or 55 Years. That formerly the Representatives of the said three Counties, and of the said Province, composed one joint Assembly, but, for near 30 Years past, the Representatives of the said Counties have made a distinct Assembly. All which Assemblies have been always held under the Proprietors of Pensilvania, and never under the Proprietors of Maryland. That there have been Courts of Judicature held in the said Counties, which as long as he remembers, were always held under the Proprietors of Pensilvania, and not under the Proprietors of Maryland; but has heard there were Courts held at the Town, now called Newcastle, formerly Sandhook, and at the Town now called Chester in Pensilvania, formerly called Upland, by the Dutch.

**John Garretson, aged 77. [Lib. B. fol. 7. Int. 30. fol. 13.]*

Has known the Province of Pensilvania and the County of Newcastle, which was formerly called Sandhook, as long as he can remember, but was not well acquainted with the lower Counties, but heard the lowest County was called Whorekill,

and the next above it Jones's. That, for about 30 Years past the Province of Pensilvania and the three lower Counties have been represented by different Assemblies, but, before that time the Representatives were joined, and composed but one Assembly for the whole. That the said Assembly for the said Counties, during these 30 Years, have been elected annually, and were always held under Mr. Penn and his Descendants, and never under Lord Baltimore; That Courts of Judicature have been always held in the said Counties as long as he can remember, under Mr. Penn and his Descendants only.

Jeremiah Langborne, aged 66. [Lib. C. fol. 719. Int. 30. fol. 721.]

Has known Pensilvania and the three lower Counties above fifty four Years. Ever since he can remember till 1701 the Representatives chosen by the People of the said Province and Counties did compose one joint Assembly to make Laws for Government of said Province and Counties. And in 1699 or 1700 this Affirmant was chosen a Representative for Bucks County, and met the other Representatives for the Province of Pensilvania and the Representatives chosen for the said Counties, at Philadelphia; where they made one joint Assembly. And that from 1701 or 1702 (to the best of his Memory) to this Time, the Representatives of the said Province and Counties have composed two distinct Assemblies. Believes there have been Annual Assemblies held for the said Counties (either in Conjunction with that for Pensilvania, or separately as aforesaid) ever since he knew the same. Never heard, or knew that any such Assemblies were held by or under any other Authority than that of Mr. Penn. Has heard and believes that Courts of Judicature have been held, from time to time in the said Counties, ever since he knew them, which as he has heard and believes were always held under the Authority of Mr. Penn.

John Webster of Maryland aged 72, Defendant's Witness cross-examined [Lib. E. fol. 22. Int. 5. fol. 23.]

Says there is an Assembly of the Representatives of Maryland, which is a Part of the Legislature of that Province, but knows not, that any Persons were ever elected, in any of the three lower Counties, to serve in that Assembly.

Benjamin Tasker of Maryland aged 50, Defendant's Witness, but cross-examined [Lib. E. fol. 49. Int. 5. fol. 52.]

Speaks in the self-same Words with Webster.

13TH BRANCH, To prove that the very Acts of Assembly past in Lord Baltimore's own Province of Maryland do from time to time call the Lower Counties, the Territories of Pennsylvania, and tax Goods coming from thence, or carried thither, as Goods coming to or going from another distinct Province, And that those Laws are from time to time enforced and put in Execution.

Edward Chambres of Maryland aged 51. [Lib. C. fol. 456. Int. 111. fol. 459.]

Has lookt upon the produced printed book, intituled, A Collection of the Laws of Maryland, collected and printed by Authority at Annapolis in 1727. Says that book is well known in Maryland, and received and allowed as Authority in the Courts of that Province as the Laws thereof. As to Page 49 in the Act to prevent exporting of Tobacco by land, says that by the Words (Territories thereunto) immediately following the Words Province of Pennsylvania in the third Line, and again in the fifth Line, are meant the three lower Counties of Newcastle, Kent and Sussex on Delaware, as he understands and believes. As to Page 157 in the Act laying an Imposition on Negroes and other Things, says that the like Words there, have the like Meaning as he understands and believes.

Edward Chambres [Int. 122. fol. 462.]

Has lived in Maryland 11 or 12 Years, and has held the Office of Collector of his Majesty's Customs for the Port of Pocomoke in that Province during all that time. Is acquainted with the Trade and Navigation of that Province, and with the Duties arising upon Shipping, and Customs or Duties upon Goods imported or exported into or out of that Province. Says that Ships and Vessels trading into and out of the said Province pay Tonnage of 17 d. Sterling per Ton, which is paid to the several Naval Officers out of that Province—Says that Ships and Vessels trading into and out of the said Province pay Tonnage of 17 d. sterling per Ton, which is paid to the several Naval Officers of that Province, and that 14 d. of the said Tonnage is received for the use of the Defendant, and the remaining 3d. for the use of the Governor of that Province. But by what Authority the 14 d. a Ton is demanded, or received, he knows not. Has lookt on the 44th Page of the said Book of the Laws of Maryland, into the Act there for confirming to the Governor 3d. a Ton upon Ships and Vessels, And says that Ships or Vessels built in or belonging to the People of the Counties of Newcastle, Kent and Sussex; and trading into Maryland, do and have paid the said Duty ever since he came into his Office of Collector, but for how long before knows not. And has lookt on the 30th Page, and says

the People of the said Counties who have such a seated Plantation as there mentioned, where they have with their Families, resided for a whole Year, within the said three Counties, or any of them, are not intitled to the Privilege of Residents in the Province of Maryland within the Meaning of that Act. And the Reason of his Belief is because such People of the said Counties live in another Government.

William Rumsey of Maryland, aged 42, the Defendant's Witness being cross-examined [Lib. E. fol. 25. Int. Additional 5. and 6. fol. 26. and 28.]

Says he holds the Naval Office of Cecil District under the Governor of Maryland, the Deputy Commissary's Office of Cecil County under Mr. Dulany Commissary General, the Deputy Surveyor's Office of the said County under Mr. Harris, Surveyor General of the Eastern Shore, is Receiver of the Rents of two Mannors for Lord Baltimore, under Authority from the Governor, is a Justice of Peace in Cecil County, and a Representative for that County in the Assembly. And says he has lookt on the Book produced markt 3. And it's well known in Maryland, and is generally received and allowed as of Authority in all Courts within that Province, as the Laws of that Province, and has lookt upon the 49, 73, and 157 Pages, and that by the Words (Territories thereunto belonging) in those several Places immediately after the Words (as of the Province of Pensilvania) he understands and believe the three lower Counties of Newcastle, Kent and Sussex on Delaware are meant.

Note—This Man with all these Offices is one of those who gave the Opinion as a Surveyor that the Circle should be only two Miles distant, and he is one that swears to an Opinion about the Extent of Lord Baltimore's Charter.

Benjamin Tasker of Maryland aged 50, the Defendant's witness, but cross-examined [Lib. E. fol. 49. Int. 5. Additional, fol. 57. Int. 3. Original, fol. 51. and Int. 6. Additional, fol. 58.]

Says fol. 57. That he holds the several following Offices of Trust and Profit in Maryland, viz. One of the Defendant's Council of State, Agent, and General Receiver, and Naval Officer of the Port of Annapolis, by Appointment of the Governor of Maryland, also Surveyor of the Customs by Commission from the Commissioners of the Customs at London, and Mayor of Annapolis by Election pursuant to the Charter of that City, Fol. 51. That he never knew or heard the three lower Counties called by any other Names than Newcastle, Kent and Sussex, and the three lower Counties, and (as he thinks) by the Name of the Territories of Pensilvania; but whether they were called so by the Government or Legislature

of Maryland, knows not. [He did not know what we were going to ask him, for] fol. 49. he has lookt upon the printed Book markt No 3. and says it's a Book well known in Marlyand, and is constantly received and allowed as Authority in all the Courts of Judicature within that Province as Part of the Laws of that Province (except such of the Laws therein contained as have been repealed, annulled or expired since the publishing the same) And he says that by the same Words, Territories thereunto belonging, in the Laws, fol. 49, 73, and 157, the three lower Counties of Newcastle, Kent and Sussex, are meant and intended.

John Webster of Maryland the Defendant's Witness cross examined, aged 72. [Lib. E. fol. 22. Int. 4. fol. 23.]

Has heard several of the common People dwelling in Sussex County, call the three lower Counties, the Territories of Pennsylvania.

Abraham Allman of Maryland, aged 50. [Lib. B. fol. 236. Int. 112. fol. 237.]

Does not know of any Bread, Beer or Flour being seized, by any Officer of Maryland, for being imported from either of the three lower Counties, all which he names. But says he himself has once paid Duties, to William Rumsey Naval Officer in Cecil County [in Maryland] for Rum imported by the Deponent into Maryland from Apoquinimink in Newcastle County. And which Duties the said Rumsey claimed as due and payable under some Law of the Province of Maryland, as the Deponent understood.

John Carnon of Maryland Merchant, aged 45. [Lib. B. fol. 247. Int. 112. fol. 275.]

He never heard of any Bread, Beer or Flour being seized. But has himself paid, and has known several other Persons pay, at sundry times, since 1727, several considerable Sums for Duties of Negroes and Rum imported by him and them, from Newcastle County, into Maryland. And which Duties were paid to Stephen Knight and William Rumsey, as Naval Officers of Cecil County, and due and payable or claimed by them, by vertue of an Act of Assembly of Maryland, as the Deponent understood and believes.

John MacArthur of Maryland, aged 35. [Lib. B. fol. 292. a. Int. 112. fol. 292. b.]

He knows of no Commodities imported from the Lower Counties into Maryland, that have been seized in that Province; But the Deponent formerly brought two Hogsheads and a Barrel of Rum, from Barbadoes, and landed the same at Phila-

delphia, and carried them into Christiana Creek in Newcastle County, and, from thence, by Land into Cecil County. That the Deponent was there informed by William Rumsey (who he believes was Naval Officer there under Maryland Government) that if the Deponent did not pay the Duty of the said Rum, he would seize the same. Whereupon the Deponent paid him the Sum he demanded; and understood and believes it was received from him under the Authority of the Government of Maryland.

George Lawson of Maryland, aged 30. [Lib. B. fol. 302. Int. 112. fol. 303.]

Heard some Rum was seized about two Years ago, as carrying from Newcastle County to the Iron Works in Cecil County, but that the affair was afterwards made up and agreed. He has at several times paid Duty for Rum which he imported into Maryland from the County of Newcastle, unto William Rumsey, as Naval Officer for Cecil County, who claimed and received the same, as the Deponent understood and believes by vertue of and under some Law of the Province of Maryland.

John Scott aged 34. [Lib. B. fol. 304. Int. 112. fol. 305.]

In 1735 he carried Rum from Apoquinimy Landing in Newcastle County, by Land to the Head of Bohemia River in Cecil County in Maryland, and there paid a Duty of 3d. per Gallon for it to William Rumsey, Naval Officer of Cecil District under the Government of Maryland.

Andrew Porter of Maryland, aged 35. [Lib. B. fol. 306. Int. 112. fol. 306.]

Has heard that Duties have been several times paid for Rum imported into Maryland, from Newcastle County to William Rumsey Naval Officer of Cecil County. And this Deponent is now sued by the said Rumsey, for the Duty of Rum, he imported from Christiana Bridge in the County of Newcastle into Maryland; which Suit is now depending in the County Court for Cecil County. And the said Rumsey claims and receives the said Duties, by vertue of or under some Maryland Law, as the Deponent understands and believes.

William Rumsey Naval Officer in Maryland, aged 42, the Defendant's Witness, but cross-examined [Lib. E. fol. 25. Int. 7. Additional fol. 30.]

Has heard and believes that Bread, Beer, Flour, Malt, Wheat, and other English Grain and Tobacco have been imported and brought from the three lower Counties since the making the Act contained in Page 73 of the Law Book, but never heard that any of them were seized by any Officer of Maryland. But has

been informed that some Wheat brought from Nottingham under the Government of Pensilvania, was seized by John Ward of Cecil County. That as Naval Officer, by vertue of divers Acts of Assembly of Maryland, he has received from several Persons sundry Duties for Rum, Wine and Negroes, imported into Maryland from Newcastle County. That he brought an Action against one John Carnau in Cecil County, for transporting Hides from Bohemia Landing in Cecil County in Maryland, to Apoquinomy in Newcastle County, with Intention to transport them to Philadelphia, as he apprehended from some Words spoke by Carnon, and recovered Judgment against Carnon in Cecil County Court; but he brought a Writ of Error in the Provincial Court of Maryland, where the Judgment was reverst. The Cause of which, as he has generally heard, was that Apoquinomy was within the Province of Maryland, but has been informed, by one of the Justices of the same Court, it was upon a Fault in the Declaration.

Benjamin Tasker of Maryland, aged 50, Defendant's Witness but cross-examined [Lib. E. fol. 49. Int. 7. Additional fol. 61.]

Remembers that Sir William Keith late Governor of Pensilvania imported into Maryland in a Sloop from Newcastle, a Loading of Bread, Flour, and Beer, since the making the Act, Page 73 of the Law Book, and that Horses have been since commonly imported into Maryland from the said three lower Counties. And remembers that some Horses were seized, during the Continuance of that Act, and that they were acquitted, but for what Reasons can't set forth. Has heard that Duties, for Rum and Wines imported from the three lower Counties into Maryland, have been paid to the Naval Officers of Cecil County in Maryland, by vertue of the Act Page 157 in the Law Book. And has heard that some Hides were seized by William Rumsey, as being exported out of Maryland contrary to a Maryland Act, and were afterwards acquitted, but for what Reasons knows not.

14TH BRANCH, Containing some General Account of the great Expence Mr. Penn was at, and how much he has impaired his English and Irish Estates to settle this Country.

You'll please to remember, under this Head, that though Mr. Penn's Petition for a Grant of Lands in America is worn out, and rendered imperfect, yet there remains enough of it, as it appears more authentically in the Acts of Council thereupon in 1680, to shew that he petitioned for it in Recompence for great debts then due to him from the Crown.

James Logan, aged 66. [Lib. B. fol. 76. Int. 11. fol. 109. The latter Part of his Answer to that Interrogatory. fol. 118.]

After speaking of the Grants of Pensilvania and the Lower Counties made by King Charles and the Duke of York to Mr. Penn, he says, Mr. Penn in 1682 arrived himself in the Province and transported thither from England, a vast Colony, in thirty-two Ships, at sundry times before he himself left the Country in 1684. In which Expedition, during the said William Penn's Continuance in the Country, which did not amount to the full Term of two Years, the said William Penn, as the Affirmant is well assured from the intimate Acquaintance he had afterwards with the said William Penn's Affairs, expended not less than a Sum betwixt Six and Ten thousand Pounds Sterling.

Letitia Aubrey, aged 60. [Lib. A. fol. 134. Int. 40. fol. 145.]

That William Penn, the Plaintiffs Father, was in his Lifetime possess and intituled to a large and considerable Real Estate in England and Ireland, but did not die possess of or intituled to all the same real Estates. For she remembers his selling (about 1712 as she believes) an Estate at Worminghurst in Sussex of the yearly Value of 200*l.* or upwards, and heard he, many Years before, sold another Estate in England, and also an Estate in Ireland of several Thousand Pound Value: and has heard and believes he likewise mortgaged one or more of his Estates. The Reason of selling and mortgaging the same was, as she believes, to raise Money the better to enable him to settle and defend his Colony in America.

John Page, aged 60. [Lib. A. fol. 174. Int. 40. fol. 191.]

Was well acquainted with the said William Penn from 1705 till his Death, and had Opportunities of being well acquainted with his Circumstances and Affairs, which were in a bad Condition. And this Deponent can depose the same, because he was employed as his Attorney or Solicitor from 1707 till his Death. Knows the said William Penn was a Prisoner in the Fleet from Hillary 1707 to October 1708, at the Suit of Ford and others, for a Debt of above 12,000*l.* owing from the said William Penn upon a Mortgage of Pensilvania, and it was with a great deal of Difficulty that he raised Money for discharging the same. When the Deponent first knew him, he was intituled to a considerable real Estate both in England and Ireland, but did not die possess of and intituled to all the said real Estates, for in 1707 he sold Part of the said real Estate in England of a considerable yearly Value, at Worminghurst in Sussex, to Mr. Butler since deceased, and afterwards sold a considerable Part of his real Estate in Ireland to Mr. Bernard then Solicitor General there, and this Deponent was concerned for the said William

Penn in the said Sales, which the Deponent believes were made by him for raising Money to pay his Debts. The Deponent hath heard in the Family, and believes, that before the Deponent's Knowledge of the said William Penn, he had sold or mortgaged some considerable Estates in England, which were his first Wife's Inheritance, for raising Money to enable him to carry on the Plantation of his said Province of Pensilvania.

Ferd. John Paris [Lib. A. fol. 195. Int. 40. fol. 330.]

Never had any great Acquaintance with the said William Penn or with his Circumstances or Affairs, during his Life time; but from 1722, became acquainted with and transacted Business in a great many Affairs for Springett Penn, Grandson and then Heir at Law to the said William Penn, down to the Time of Springett's Death in 1730; and immediately after was employed for William Penn junior, who upon his Brother Springetts Death, became Heir at Law to the said William Penn, and has been concerned in a great Number of Affairs for the the said William Penn junior, till 1739, that he went to reside in Ireland. And by reason of being so employed for the Heirs at Law, has had frequent Opportunities and Occasions to look into the Deeds and Titles of the Estates in England and Ireland, which appeared to have been enjoyed by Proprietary Penn, whereby the Deponent plainly perceived that after 1680, he made considerable Mortgages and Sales of his Estates in England and Ireland, but to what Value can't say, nor how or in what manner he applied the Money thereby raised, but was informed by Springett Penn in his Life time that the Estates, sold off by the said William Penn amounted to a great yearly Value, and as near as Deponent remembers, he mentioned that such Estates so sold off in Ireland only were then of the Value of 1200*l.* per Annum, or thereabouts.

John Jefferys aged 69 [Lib. A. fol. 63. Int. 40. fol. 66.]

Was acquainted with the said William Penn, and served him as Secretary for two Years. from 1705 to 1707, whereby he had some Opportunities of being acquainted at that time, with his Circumstances and Affairs, which, as the Affirmant believes, were pretty much perplext. Says the said William Penn was then possess'd of, or intitled to, a considerable real Estate in England in Kent and Sussex, and also in Ireland; But, while the Affirmant was his Secretary, or some time afterwards, the said William Penn did, as the Affirmant understood and believes, sell or dispose of his Estate at Worminghurst in Sussex, which, as he remembers, was computed at about 300*l.* a Year, and also part of his Estate in Ireland.

John Jefferys aged 60. [Lib. A. fol. 3. Int. 41. fol. 68]

Whilst he served the said William Penn as his Secretary, he was privy to several of his Accounts; and in or about 1706, the said William Penn employed and directed the Affirmant to write out and state an Account, from Particulars he gave the Affirmant for that Purpose, of the Costs and Charges of his Affairs in Pensilvania and the Profits arising therefrom; whereby it appeared and was stated, that the Province of Pensilvania and the three Lower Counties of Newcastle, Kent and Sussex, stood indebted to the said William Penn in the Sum of 64,000*l* and upwards, over and above the Profits he had received therefrom.

15TH BRANCH, That the now Plaintiffs have possest ever since 1726.

Samuel Preston aged 75 [Lib. B. Fol. 312. Int. 16. Fol. 324.]

Says he has lived in Philadelphia ever since 1726, and therefore knows that the present Plaintiffs have been in Possession of the three lower Counties of Newcastle, Kent and Sussex ever since that Time, as Proprietors and Landlords of the same.

16TH BRANCH, Of the Number of Persons settled in each of the three Lower Counties.

Thomas Noxon, aged 40, [Lib. C. Fol. 488. Int. 124. Fol. 525. Further on Fol. 527.]

Says he lives in the County of Newcastle, and is well acquainted therewith, and also with the Counties of Newcastle, Kent and Sussex. That the County of Newcastle is very thick settled, the County of Kent well settled, but not so thick as Newcastle, and the County of Sussex not quite so thick as Kent, there being great Quantities of poor Land in Sussex County. Says there is at least, 1400 Taxables in the County of Newcastle, which he computes and believes make about an Eighth Part of the Inhabitants in that County, [8 times 1400 make 11,200] And that there are two Churches and two Chapels, and also 8 Dissenting Meeting Houses, in the County of Newcastle; and a publick Court-house, and a Prison, and a Market-house, in the Town of Newcastle. And two Market Houses in Wilmington in the said County of Newcastle.

Benjamin Chew aged 18 [Lib. C. Fol. 772. Int. 126. Fol. 773.]

Knows Part of Newcastle County, and lives in Kent County, but does not know Sussex County. That Newcastle County is

pretty thick settled, but Kent County not so thick settled. That he acted last Year as Deputy Clerk of Kent County. and, from a Calculation he made upon a particular Occasion, from the Levy Lists, it appeared there were 1025 Taxables in the same County. That he does not know what Proportion the Number of Taxables bears to the Number of all the Inhabitants of that County, but has heard People, that he esteemed of better Judgment than himself, say they judged they were about 8 or 10 to one [only 8 times 1025 make 8,200]. Does not know what Number of Churches or Meetings there are in that County, and knows of no other publick Buildings therein but a Court-house and a Prison.

** William Till aged 43 [Lib. C. Fol. 740. Int. 126. Fol. 741.]*

Knows the Counties of Newcastle, Kent and Sussex, and formerly lived many Years in Sussex County, but now lives in Philadelphia. Says the said Counties are very well settled. And believes there are about 600 taxable Persons in the County of Sussex. which he believes is about one seventh Part of all the Inhabitants in Sussex County, [7 times 600 make 4200] And that there are in that County, one Church and two Chapels, all under the Care of one Minister of the Church of England, two Presbyterian Meeting Houses, and two Quakers Meeting Houses, and the other publick Buildings are a Court-house and Prison in that County.

17TH BRANCH, Of the very strange Way of granting Out Lands by the Maryland Officers; and the Consequences which they insist arise from the Persons locating such Grants.

Benjamin Tasker Defendant's Witness, but cross examined, aged 50 [Lib. E. Fol. 49. 20th Int. Fol. 53.]

That he is at present Agent for the Defendant, and General Receiver of all his the Defendant's Rents, Rights and Dues in the Province of Maryland.

The same [21st additional Interrogatory, Fol. 54.]

That the Method for authorising the Defendant's Surveyors for laying out Lands is first, to obtain a Certificate to the Judge of the Land Office, from the Defendant's Agent, that his Dues are paid for the Quantity of Land desired, and upon that, a Warrant is granted, in the Land Office, directed to a Surveyor to lay out the Land applied for, and after such Surveyor has made his Return upon such Warrant to the Land Office, and the same is examined and approved, a Patent from the Land Office is thereupon granted: believes that such Surveyors,

sometimes do, and sometimes do not actually run out the Lines of such Surveys, but always do mark or certainly describe, one, or more of the Boundaries of such Lands so by them surveyed; and the said Surveyors always make their Returns upon such Warrants, as if they had actually run out the several Lines.

Griffith Beddoe, the Defendant's Witness, cross examined, aged 39 [Lib. E. Fol. 18. Int. 45. Fol. 19.]

That there are Grants of Lands recorded in the Land Office of the Province of Maryland, which Lands are expressed by those Grants to lie on the West Side of Delaware Bay, and as he is informed lie in the three lower Counties on Delaware; and other Grants of Lands expressed to lie on Christiana Creek recorded in the said Office, which he is also informed, lie within the same Counties; the Names of all which Lands, and of the Persons to whom the Grants were made, do appear in the Exhibits on the Part of the Defendant, numbered (4) purporting to be Extracts or Copies of several Grants or Patents of Land recorded in the said Land Record Books of the Province of Maryland.

The same [Int. 47. Fol. 21.]

That he knows not, nor has he seen, in the Entries of the Land Office of the Province of Maryland, that the Proprietors of Maryland, or their Agents, denied to grant Warrants or Patents for Lands, because such Lands lay, as were supposed to lie, within the Province of Pensilvania, or the three lower Counties on Delaware.

NOTE—They may according to this Method of Granting, grant out even Philadelphia it self, or all Pensilvania, if they set at home and invent imaginary Surveys in a Chimney Corner: and then, the Entries of these Grants are to be topt upon us, as real Grants made by the Defendant, when there is not a single Instance of his having fairly settled any one spot in the Lower Counties.

James Logan aged 66 [Lib. B. Fol. 76. Int. 18. Fol. 125.]

Has conversed divers Times with Philemon Lloyd, who was Agent to the Lord Baltimore, Proprietor of Maryland, on the Subject of granting Warrants at large for Lands to be located at the Pleasure of the Purchaser; and on his blaming the Conduct of some of that Province for their pretending to take up lands far within what had always been reputed the Province of Pensilvania, and, at one particular Time, upon this Witness's mentioning that Matthias Vanbebber, and one of Henry Hollingsworth's Family about 1716, had presumed to survey Lands towards the River Susquehannah, as far Northwards, as the City of Phila-

delphia, which had always been accounted by the People of Pennsylvania not less than 20 Miles within their well grounded Claims, which Practice divers others likewise afterwards attempted, the said Philemon Lloyd alledged in Excuse that those Things were done without the Knowledge, much less the Direction of any concerned in the Land Office of Maryland; for that, their Warrants were at large, for any Lands whatsoever, that were vacant and unappropriated before, within the Bounds of that Province; and it was entirely at Choice of the Purchasers of such Warrants to locate them where they thought fit, at their own Risque; but the present Governor of Maryland, Samuel Ogle, at a Meeting of the Commissioners (of which this Witness was one) appointed by the Proprietors both of Maryland and Pennsylvania, for settling the Boundaries pursuant to the Articles of May 1732, which was held at Newcastle on 30th October in the said Year and the three following Days, upon discoursing the aforementioned Subject of Warrants at large, strenuously insisted that the Division Lines, tho' agreed on, not being yet run, such Warrants issuing from the Office of Maryland, wherever they were located, make the Land, on which they were laid, a Part of the Province of Maryland.

Samuel Preston aged 75 [Lib. B. fol. 312. Int. 18. fol. 324.]

That at a Meeting of the said Commissioners in February 1732, upon some Conversation concerning Encroachments made by the Inhabitants of Maryland and Pennsylvania, Samuel Ogle, then Lieutenant Governor of Maryland, said, That the Land Office in that Province was open, and any Person applying to the said Office, and complying with the Conditions obtained a Warrant for taking up Lands in the Province of Maryland, which he might locate where he pleased, the Boundaries between the two Provinces not being known; whereupon Andrew Hamilton, one of the Plaintiffs Commissioners, asked the said Ogle if the Person obtaining such Warrant should execute it, by an Officer of Maryland, three or four Miles above, or to the Northward of Philadelphia, Whether the Person obtaining the same Warrant would thereby, become a Marylander? The said Samuel Ogle answered, that such Person must be looked upon as his Lordship's Tenant, or Words to that Effect.

**James Steel [Lib. C. fol. 559. Int. 18. fol. 638.]*

That at a Meeting of the Commissioners appointed to run the Lines on the first or second of February 1732, on some Conversation between the Commissioners for Maryland and Pennsylvania touching some Settlements made on the West Side of Susquehanna River under Maryland Warrants, Mr. Ogle, one of the Maryland Commissioners [and Governor] then said that

Warrants for surveying Lands in Maryland were granted at large, and that the Persons who took out, or were possesst of such Warrants, had it in their Option, and might locate such Warrants where they pleased: The Pensilvania Commissioners answered that, according to such Position, such Warrants might be located in the Neighbourhood of Philadelphia, or to the Northward of it: The said Ogle replied, that in case such Warrants should be so located, the Persons locating the same ought to be esteemed Lord Baltimore's Tenants, until the Division Lines between the Provinces were actually run and settled.

A most mischievous, and unheard of, Doctrine in America, purely to beget eternal Contests, first invented and closely observed by this Governor Ogle, who has really been the Incendiary, that has defeated the salutary Agreement made between the Parties, as we shall see, even from his own Evidence, by and by.

18TH BRANCH, Of the notorious Scituation of Pensilvania and the lower Counties, both upon one and the same West Side of the River and Bay of Delaware, and of my Lord's going personally, by Land, from the one to the other of them in 1733, which, nevertheless, he has been pleased to swear, in his Answer, are separated by, and lie on different Sides of, that great Bay and River.

James Logan, aged 66 [Lib. B. fol. 76. Int. 7. fol. 91.]

Has been acquainted with Pensilvania, Three Lower Counties, and the Province of New Jersey, above 30 Years; and it is notorious that Pensilvania and the said Counties lie on the West Side of Delaware Bay and River, and the Province of New Jersey on the East Side thereof.

Samuel Preston aged 75 [Lib. B. fol. 312. Int. 121. fol. 450.]

Has frequently travelled, by the Common Road, from Newcastle Town to the City of Philadelphia, which is esteemed about 36 Miles, and there is not any Bay or River that divides the Province of Pensilvania from the County of Newcastle: and verily believes no considerate Man, who travels that Road, can so far mistake, or be ignorant of the Scituation of the said County of Newcastle, as to believe it to be on a different Side of Delaware Bay or River from the Province of Pensilvania, because they are apparently on one and the same Side thereof.

Edward Chambers of Maryland aged 51. [Lib. C. fol. 456. Int. 121. fol. 467.]

In totidem verbis.

William Beckett aged 43 [Lib. B. fol. 277. Int. 121. fol. 277.]

The Defendant's own Witness, cross examined, says the same thing exactly, but in stronger Terms; for he thinks no Man in his senses, that rides that Journey by the Common Road, can be ignorant of the Scituation, or believe them to be of different Sides.

Gideon Griffith aged 45. [Lib. B. fol. 279. Int. 121. fol. 279.]

In the same Words as Mr. Beckett.

George Ross, Clerk, aged 59. [Lib. B. fol. 308. Int. 221. fol. 308.]

Another of the Defendant's own Witnesses, cross examined, says the same thing as Beckett and Griffith, *in totidem verbis*.

Abraham Taylor aged 37 [Lib. C. fol. 477. Int. 121. fol. 467.]

In totidem verbis.

Edward Chambres aged 51 [Lib. C. fol. 456. Int. 7. fol. 457.]

Has been acquainted with Pensilvania, and the lower Counties, above 20 Years, and has seen the Province of New Jersey; and says the Province of Pensilvania is not contiguous to the Province of New Jersey, being separated therefrom by the River and Bay of Delaware which run betwixt them; and that Pensilvania lies on the West, and New Jersey on the East Side of the said Bay and River. And Pensilvania and the lower Counties lie on one and the same Side, viz. the West Side of the said Bay and River.

William Rumsey of Maryland aged 42, the Defendant's Witness, cross examined, [Lib. E. fol. 25. Int. 1. additional fol. 25.]

Says the River Delaware lies between Pensilvania and New Jersey. And that the lower Counties and the Province of Pensilvania lie on the West Side of the Bay or River of Delaware.

Benjamin Tasker of Maryland aged 50, Defendant's Witness, cross examined, [Lib. E. fol. 49. Int. 1. Additional fol. 49.]

Says with great Difficulty, at last, that the Bay and River of Delaware separate Pensilvania, from that Part of New Jersey which he is acquainted with; and that the Province of Pensilvania, and the three lower Counties, as he understands, lie on the West Side of the Bay and River Delaware.

George Ross, Clerk, [Lib. B. fol. 308. Int. 120. fol. 310.]

The Defendant's own Witness, cross examined, swears that Lord Baltimore came to the Town of Newcastle by Land, in Day-time, in 1733, when the Deponent saw him, That he then walked about that Town, stayed there one Night and Part of the next Day. That the Defendant then rode from thence up to Chester Town in the Province of Pensilvania, where this Deponent waited upon him, and from thence went as the Deponent was informed and believes to the City of Philadelphia.

Gideon Griffith [Lib. B. fol. 279. Int. 120. fol. 290.]

Confirms the same.

Abraham Taylor [Lib. C. fol. 477. Int. 120. fol. 487.]

Has heard and believes that Lord Baltimore was at the Town of Newcastle on Delaware in the beginning of the Year 1733, and that he came from thence by Land into the City of Philadelphia, where the Deponent saw him, and he continued some Days,

19TH BRANCH, Of the Treatys in Order to, and the drawing, perusing and settling the Draught of, the Agreement, the Map, and Mr. Senex's written Opinion, * * * * * and the Execution, by the Partys, of the Agreement in Question, and of the Commissions for running the Lines pursuant thereto.

Ferd. John Paris [Lib. A. fol. 195. Int. 16. fol. 199.]

Says, that he became well acquainted with, and known to, the Defendant, at the time, and in the manner following; In 1725, the Earl of Sutherland having made Application to the Crown, relating to the three Lower Counties, there were several Attendances, or Hearings thereon, before his Majesty's then Attorney General; at which Hearings such Application of the Earl of Sutherland was opposed, not only by the Mother of the Plaintiffs, and also by Springett Penn as Heir at Law, then, of Proprietary William Penn, but also by the now Defendant; on which occasion the Deponent acted and appeared, not as Solicitor for the Plaintiffs, or their Mother, but as Solicitor for another Branch of that Family, namely for the said Springett Penn; and in or about 1729 and 1730, this Deponent became further known to the Defendant, by having often attended him on several Acts of Assembly past in his own Province of Maryland, and on Complaints from thence, of the Clergy there, or other Persons relating to Matters arising in his said Province of Maryland; and that in 1730, this Deponent was appointed by the Assembly of Pensilvania to be their Agent here, and, as such, publickly acted, in London and Westminster, in the publick Affairs of Pensilvania. And saith that about the beginning of 1731, the Deponent accidentally met the Defendant, and falling into Discourse, the Defendant took occasion to mention to the Deponent, that both himself and the Proprietors of Pensilvania greatly suffered, from some Disputes which had for a long time subsisted between them, and their Families, and that he wished they were accommodated, or to the like Effect, as near as the Deponent can recollect; whereto the De-

ponent answered, he had heard a good deal of these old Disputes, and that it did seem to be high time they should be composed, or to such Effect; and acquainted his Lordship that if he would give leave, he the Deponent would acquaint Mr. Penns (who the Deponent believed would be very willing to accommodate that Matter) with what his Lordship had said, or to such Effect; and his Lordship, to the Deponent's Apprehension, then expressed his Desire, that the Deponent would mention to them, what had so passed between his Lordship and this Deponent. Saith that ne the Deponent was, about that time, and for a considerable time before, had been endeavouring to compose a great Difference between William Penn the Younger, (who was then upon his elder Brother Springett Penn's Death, become Heir at Law of Proprietary William Penn) and the now Plaintiffs John, Thomas, and Richard Penn, about Proprietary William Penn's Will, and about his American Estate; and the Deponent apprehending then, that an Agreement, between the Lord Baltimore and Mr. Penns might facilitate the Conclusion of an Agreement between the different Branches of Proprietary William Penn's Family, and might procure better Terms from the Plaintiffs to the said William Penn junior, (who was then this Deponent's Client) for confirming Proprietary William Penn's Will and Disposition of his American Estate, the Deponent was very glad therefore of an Opportunity to promote that other Agreement with Lord Baltimore; and thereupon the Deponent did, very soon after such Discourse had past between the Defendant and the Deponent, take an Opportunity to acquaint the Plaintiffs John and Thomas Penn, and also the Deponent's then Client the said William Penn junior thereof; who declared on their Parts, that they were satisfied how much it was the common Interest of all Parties to settle those old Disputes with the Lord Baltimore; In a short time after which, there was a Meeting had, between the Defendant, and some, if not all, of the now Plaintiffs, at the Ship Tavern near Temple-Bar, on or about 3d June 1731, at which Meeting the Deponent was present; and after the Occasion of that Meeting had been opened, and some Discourse had between them, one of the now Plaintiffs (and to the Deponent's best Remembrance it was the Plaintiff Thomas Penn) produced a small written Map of part of Pensilvania and Maryland, and of some adjacent Parts; and the Defendant, on his part, produced another written Map of the like Places, upon comparing of which two Maps together, they seemed to have in the descriptive Parts of the Places no material Difference that the Deponent could perceive, which Map produced by the

Plaintiffs as aforesaid, is the the Map markt Par. (No 1.) now produced, and each of the said Maps had, then, a Circle or part of a Circle, drawn round the Town of Newcastle. And after a good deal of Conference and Discourse, of the Lord Baltimore's Claim to the three Lower Counties of Newcastle, Kent and Sussex, and also, how high, or how far North, his Head-Line of his Province of Maryland should extend, the Lord Baltimore with a Pencil and Rule, drew, upon his said Map, a strait Line from a part at the Edge of the Land, which was there called Cape Hinlopen, to the Westward a-cross a good Part of the Peninsula, into the Middle, or thereabouts, of the Peninsula, and then, drew another strait Line, Northwards, up to the Top of the Peninsula, and above every Part of the Peninsula, and into the main Land or Continent, (as there described) and until it went, by and above, some part of the Circle: and then he drew another strait Line, Westwards, across the River at the Head of Chesapeak Bay, (at the upper Point of the said second Line) as and for what he then insisted should be his Boundary; and it was then declared by the said Lord Baltimore, that those two first mentioned Lines would leave the three lower Counties to Mr. Penns; and that the third Line above-mentioned should be the Head Line, or North Boundary of Maryland, and the Foot Line or South Boundary of Pensilvania, or to some such Effect: Saith that one of the now Plaintiffs (and to the Deponent's best Remembrance, it was the Plaintiff John Penn) then, with a Pen, drew Lines, upon his Map, how he desired the said Lines should run; which Lines so drawn roughly by the Plaintiff, were much like those drawn by the Defendant, save that the Plaintiff made the general Foot-Line, or South Boundary of Pensilvania, (and consequently the general Head Line, or North Boundary of Maryland) to be lower, or more Southerly, than the Lord Baltimore had done; where-upon a very long Debate and Argument arose, between the Defendant and the Plaintiffs, at what Distance South from the City of Philadelphia, the Foot Line of Pensilvania, or the Head Line of Maryland should run? And the Lord Baltimore at first, (and always so far as the Deponent knows) persisted that such last mentioned Line should be only at 15 Miles Distance below the Parallel, or South of Philadelphia. And the Plaintiffs, or such of them as were at that Meeting, then insisted that that would be too much, or too far, above the Peninsula, and that the North Bounds of Maryland should be at 20 Miles Distance, below the Parallel, or South of Philadelphia; And the Deponent well remembers that the Terms and Proposals for an Agreement did, then, proceed from the Lord Baltimore himself, but no Agreement, was, at that time, concluded between the Parties;

but both sides took time to consider of it. And saith that after such first Meeting, the Deponent was present at a second Meeting, between the Defendant, and some, if not all, of the Plaintiffs, upon or about the 11th June 1731, when a very long Conference was had, between them, whether the Head or North Line of Maryland should be so high, as to be within 15 Miles of Philadelphia, or should be at some greater Distance South of Philadelphia? And the Lord Baltimore then insisted that it should be within 15 Miles of Philadelphia, otherwise, he would not agree, but would take some adversary Measures, or to that Effect; and such of the Plaintiffs as were then there not at all agreeing to the Lord Baltimore's said Proposal and Demand, at that time, the Treaty broke off. And saith that, some time afterwards, the Treaty was again resumed in the following manner, for that the Deponent on or about 6th July 1731, did meet the Plaintiffs John Penn and Thomas Penn, and the said William Penn junior, to consider of a Letter which the said William Penn junior then produced and shewed this Deponent, and said he had received from Lord Baltimore, which Letter intimated that his Lordship had preferred some Petition to his Majesty; whereupon, on or about 9th July 1731. the Deponent did meet the Plaintiffs John Penn, and Thomas Penn, and the said William Penn junior, or some of them, again, together with one Mr. Simon Clements a Relation of theirs, since deceased, in order to prepare an Answer, on the Part of Mr. Penns to that Letter, and to be sent to Lord Baltimore; and he then saw such Letter said to be received by the said William Penn junior, from the said Lord Baltimore, and hath since made very diligent Enquiry after the same, but that the said William Penn junior, having since released to the Plaintiffs, and having lived for several Years last, past as the Deponent assuredly believes, in Ireland. the Deponent cannot obtain the same, or any Account thereof, but is very apt to believe the same is lost or mislaid, and not now in being; and verily believes that a written Answer to such Letter was sent to, and received by the Defendant the Lord Baltimore. For that, on or about 20th of the same July 1731. the Deponent was present at a third Meeting, at the Bedford-Head Tavern, near Covent-Garden, with the Defendant the Lord Baltimore, and (according to the Deponent's best remembrance) every one of the now Plaintiffs, and also with the said William Penn junior, then Heir at Law of Proprietary William Penn, at which time very great Debates and Arguments were used, between them, at what Distance, South of Philadelphia, the Head or North Line of Maryland, or the Foot or South Line of Pensilvania, should run? Whether so near as within 15 Miles of the Parallel of

Philadelphia, (as the Lord Baltimore had before insisted) or, at some, and what greater Distance; and the now Plaintiff John Penn did then insist it should run lower, namely at 15 Miles, South of Philadelphia, afterwards at 17 Miles, and then contended, to the Deponent's now best Remembrance for half a Mile, but the Lord Baltimore appeared to be fixed and determined and declared he would absolutely have it run within 15 Miles of Philadelphia, or else would not agree, or to that Effect: insomuch that the Deponent apprehended, the Treaty would then again have broken off; whereupon the Deponent went aside, with the Plaintiff John Penn, out of the Room where the Company was met, and represented to him that, as his own Family Difference with his Father's Heir at Law, was then, in a manner agreed upon, and as there had been continual Disputes and Contests between his own Family, and Lord Baltimore's Family, for about 50 Years then past, about Boundaries, and about the said three Lower Counties, the Deponent really thought, it was for the Plaintiffs Benefit, to heal all those old Disputes together, and to accept Lord Baltimore's Proposal, and put all their Affairs at Peace, or to some such Effect; and the Deponent used such Arguments as seemed proper on that Occasion. Whereupon the Plaintiff John Penn and the Deponent returned into the Room again, where the Company and the said Lord Baltimore was, and, after some further Endeavours then used, on the Part of Mr. Penns, to induce Lord Baltimore to agree to run his Head Line, at more than 15 Miles South of Philadelphia, (but which his Lordship absolutely refused) it was at length, finally, but verbally, agreed between them, at that Meeting, that the said Head Line of Maryland, should be an East and West Line, to run 15 Miles below, or South of the Parallel of Philadelphia, and the Parties congratulated each other thereon; and another Meeting was agreed to be had on or about the 22d of the same July, to consider how to carry such Agreement into Execution. And saith that, accordingly, on or about 22d of the same July 1731, the Deponent was present, at a fourth Meeting, between the Defendant, the Lord Baltimore, and some if not all of the Plaintiffs, (but believes all the Plaintiffs were present thereat) at which time the Lord Baltimore produced a Paper, which he said he had written or drawn up, to express the Parties Agreement; and which he also said, must be drawn at length, or to that or the like Effect, and such Paper was then read over twice or thrice (as the Deponent remembers.) And the Deponent on the behalf of Mr. Penns desired to have the same, or some Copy thereof, but the Lord Baltimore declared, that he had no Copy thereof, but gave it to Mr. John Sharpe his Solicitor, who was then present,

and directed him to give this Deponent a Copy of the same; Accordingly a few Days afterwards the Deponent received, from the said Mr. Sharpe, the Paper now produced, markt (Par. No 2.) as and for a true Copy thereof; and the said Mr. Sharpe and the Deponent then examined the same therewith, and Mr. Sharpe kept the Original, and delivered to this Deponent the said now produced Copy. And saith that he afterwards went to the said Mr. Sharpe's House, and attended on him several times, in Order to draw up in Form, and settle the Agreement, to be afterwards executed between the Parties, and particularly upon or about 16th August 1731, the Deponent delivered over to the said Mr. Sharpe, the Defendant's then, and present Solicitor, the Original Paper Draft of Articles of Agreement (but not including the Additional Clauses which are now thereto) now produced, markt (Par. No 3.) of which time, as well as of several other times spoken to in his Deposition to this Interrogatory, the Deponent is the better able to depose, after this length of Time, from some Notes which he kept thereof in order to draw out his Bill for his Time and Attendances. And the Deponent is the rather certain nearly as to the Time now last mentioned, from an original Letter to the Deponent (of the said Mr. Sharpe's Hand-writing which Deponent is well acquainted with, for that the Deponent hath often seen him write) now produced and markt Par. No 4. and dated 19th August 1731, wherein, he writ to this Deponent that he had perused the Draft of the Agreement between Lord Baltimore and Messrs Penns, and thought the same perfectly right, and that he had sent it that Night to Lord Baltimore for his perusal, or to such Effect, as by the said produced Letter to which the Deponent refers. Saith, that he, on several Days, after the said 19th of August, went, and sent to, the said Mr. Sharpe's House, in order to forward the settling the said Draft, until on or about the 23d of September 1731, when the said Mr. Sharpe informed this Deponent, that Councillor Wynne then had the said Draft laid before him, which said Councillor Wynne (now Mr. Serjeant Wynne) the Deponent had before seen, acting for the Defendant, relating to his Affairs in Maryland, and according to the Deponent's best Remembrance, the said Mr. Wynne had been present, on the Part of the Lord Baltimore, at one at least of the Meetings before spoken of; and after some farther Attendances on the said Mr. Sharpe he acquainted this Deponent on or about the 28th of October 1731, that he had got back the said Draft. But the Deponent did not obtain the same, so as to see what Alterations were made, or proposed to be made therein, until on or about 8th November 1731. And, upon the Deponent's obtaining the said Draft back again, this Deponent

found the same endorsed on the Outside, with a Direction or Desire to Mr. Wynne to peruse and settle that Draft, on behalf of my Lord Baltimore, and with a Note or Memorandum, that my Lord desired those Articles might be as short and general as possible, in regard the same must be made publick in both the Provinces, and signed Sharpe Solicitor pro Lord Baltimore, in such manner as now appears thereon. And which said Indorsement, Direction, Note and Signing, this Deponent assuredly believes was and is of the said Mr. Sharpe's own proper Hand-writing (which this Deponent was and is well acquainted with as aforesaid.) And the Deponent saith that the said Draft when it was so returned back, had in the Margin of the 9th Sheet or Folio thereof, these Words written, viz. (The Miles throughout to be expressed English Statute Miles) which said Words so written there, the Deponent assuredly believes were, and are, of the said Mr. Sharpe's Hand-writing; and also several other Notes and Words had been then added and written (by the said Mr. Sharpe, as the Deponent believes) upon several other of the Sheets; and the said Draft had likewise the several other Alteration and Additions then made thereto by writing, seeming to be writ with a Pencil, and which the Deponent did then and still doth apprehend and believes had been made by the said Councillor Wynne. Of which Alterations (more especially that for expressing the Miles to be English Statute Miles) this Deponent acquainted the Plaintiffs, or some of them, and had divers Meetings with them thereon, and they appeared to be greatly dissatisfied therewith, declaring that the Miles mentioned in the said Draft, ought to have been Geographical Miles or Minutes, and not English Statute Miles; and that an Alteration, so as to make them English Statute Miles, was entirely to their Prejudice, and in Lord Baltimore's Favour, and would extend his Bounds, in those Places where Miles had been mentioned, near about a sixth Part more than he himself had ever demanded or to some such Effect, and they shewed apparent Unwillingness to agree thereto; And saith that he afterwards attended the said Mr. Sharpe thereon and objected to that proposed Alteration, in particular, and on or about 5 January 1731, a Meeting was had, between the Defendant, and two, if not all three, of the Plaintiffs, at the Lord Baltimore's House in Grosvenor Square, when after much Debate, the now Plaintiffs, or so many of them as were there at time, were prevailed on to consent to such Expression of English Statute Miles; and the said Draft of Agreement, or great part thereof, was then read over, and many Debates thereon had, and the said Lord Baltimore did then propose that some Mathematician should be consulted, upon the Draft of the said Articles; and it having been

mentioned, in the said Draft that some Map or Plan of the Place in Question, was, or was to be, in some manner or other, annexed to, or referred to, in the Articles of Agreement, Debates arose, between such of the Plaintiffs, as were then there (which the Deponent believes were all three of the Plaintiffs,) and the Defendant the Lord Baltimore, which of their two Maps or Plans should be engraved, so as to be referred to in the Articles of Agreement? and also who should be the Person that should engrave the same? And the Deponent well remembers, that some one of the Plaintiffs proposed that their Map or Plan should be engraved for that Purpose, and that a Person (whose Name this Deponent doth not now recollect, and who lived somewhere in the Strand) should engrave the same, but the Lord Baltimore insisted that his own Map or Plan should be engraved, for such purpose, and he named and desired that another different Person, one Mr. Senex of Fleet street (who is now lately deceased, as the Deponent believes) should engrave his the said Lord Baltimore's Map or Plan, and also, should examine the said Draft of the Articles; and accordingly, it was, in the Deponent's presence and hearing, agreed between the Lord Baltimore and such of the Plaintiffs as were there, that the Lord Baltimore's Map or Plan should be the Map or Plan, that should be engraved, and that the said Mr. Senex (who had been named by the said Lord Baltimore) should engrave the same; and that Mr. Senex should also consider, and give his Opinion upon, the said Draught of the said Articles of Agreement or to that Effect; and, accordingly, the Deponent was present, with the said Mr Sharpe the Lord Baltimore's Solicitor, when the said Draught of the said Articles of Agreement, was delivered to the said Mr. Senex. And the said Mr. Sharpe delivered to the said Mr. Senex the Map or Plan which this Deponent did then, and doth still believe, was the very Plan which had been markt by the Lord Baltimore as aforesaid, and the said Mr. Sharpe and this Deponent concurred in desiring the said Mr. Senex to consider the said Articles, and to give his Opinion for the Satisfaction of their respective Clients, upon the same, and upon the Propriety of the Terms and Expressions which were made use of therein, and also that the said Mr. Senex would engrave the Map or Plan so delivered to him by the said Mr. Sharpe. And the Deponent saith that, after some few Days time, the said Mr. Senex did verbally declare his Approbation of the Terms made use of in the Draft of the said Agreement, but the Deponent and the said Mr. Sharpe, or one of them, seemed rather desirous that he should give his Opinion thereon in Writing, or to some such effect, and which he afterwards did to the said Mr. Sharpe, and to this Deponent;

and that Copy of his Opinion which he delivered to this Deponent, this Deponent hath kept in his own Custody ever since, (until lately, that it was left with the Clerk, who examines this Deponent, as an Exhibit in the Cause) And it is the Paper markt Par. (No 5) now produced. And this Deponent did and doth apprehend, such Paper to have been of the said Mr. Senex's Hand-writing, but doth not know the same to be so. And that the said Mr. Senex declared he would go about engraving a Plate of the Map or Plan which had been so left with him by the said Mr. Sharpe; and after some time, the said Mr. Senex produced a Copper-plate, and also a Proof-sheet, as printed off from the same, the Lines of which the Deponent did examine as carefully as his Capacity would allow him, with the said written Map or Plan then in the said Mr. Senex his Custody, and found the same to agree together; And after such time the Deponent knows that Mr. Sharpe had in his own Custody again the said written Map or Plan, which had been so left with the said Mr. Senex, for engraving such Plan; And Mr. Senex did, at the Deponent's Request, some considerable time afterwards, stamp off some of the Prints from the Copper-plate, on the Margin of the Parchment, whereon the Articles of the Agreement were to be (and afterwards were) engrost for Execution. Saith that, at the time the said Draft of the Articles was first delivered over, although the now Plaintiffs and their Nephew William Penn junior, had very near agreed upon Terms to purchase a Release from him to them, yet, such Release from him, was not actually obtained from him, in Form (to the Knowledge or Belief of this Deponent.) And therefore in August 1731, when the said Draft of the before mentioned Articles was so delivered over to the said Mr. Sharpe, the said William Penn junior was named therein as and for a Party to the said Articles, but after that time, and while the forementioned Matters were passing, the said William Penn junior did (to this Deponent's certain Knowledge) release to his Uncles, the now Plaintiffs, or to some of them generally the said Province of Pensilvania and Counties of Newcastle, Kent and Sussex, on which Account as that Matter had intervened while the said Draft of the Articles of Agreement was under Consideration as aforesaid, some of the now Plaintiffs, or the Deponent on their behalf desired, that then the said William Penn's Name might be struck out, and he not longer continued as a Party to such Articles of Agreement, which was agreed to on the part of the Lord Baltimore, and his Conneil, but the Lord Baltimore, or his Council, Mr. Wynne, afterwards insisted that the said William Penn junior, and also some other Persons Devises of certain Quantities of 10,000 Acres of Land,

under Proprietary William Penn's Will, should by an Instrument, to be endorst on the Back of the said Articles of Agreement, declare their Consent to such Agreement between Lord Baltimore and the now Plaintiffs, and accordingly a Draft of a Deed-Poll (for an Endorsement) to some such effect, was prepared by the Deponent, and was settled by the said Counsellor Wynne, to some such effect, and makes one of the Papers now annexed or pinned to the said produced Draught of the Articles of Agreement. Saith that, upon or about 29th March 1732 (above seven Months after the said Draught had been delivered over as aforesaid) the Defendant did deliver to this Deponent a Memorandum, or Note in Writing, now produced and markt (Par. No 6) which the Deponent believes to be of the said Lord Baltimore's own Hand, containing a new Demand, that there should be a Clause to prohibit any of the People of the respective Provinces, to carry on Commerce into the Bays of Chesapeak and Delaware, by the means of any of the Rivers leading from one of the Provinces to the other, without the Leave of the Proprietor of the Province to whom the said Bay did belong, Upon the Delivery whereof to the Deponent by the said Lord Baltimore, his Lordship did signify to this Deponent, that his People in Maryland insisted on some such Clause, and that, therefore, he must have it, or to some such like effect. And this Deponent acquainted the Plaintiffs, or some of them, of such new Demand, and shewed to them the said last mentioned Memorandum or Note, and after some Consideration they agreed to have some Clause for such Purpose, and, accordingly a Draft of a Clause was drawn, which was afterwards settled by the said Counsellor Wynne, and makes one other of the Papers now annexed or pinned to the said produced Draft of the Articles of Agreement, and, at length, after many other Attendances, on the Lord Baltimore, Counsellor Wynne, and the said Mr. Sharpe, this Deponent and the said Mr. Sharpe compared the said now produced Draft of the Articles of Agreement, with Mr. Sharpe's Copy of the same Draft, on or about the 26th of April 1732, and this Deponent was to get and did get the said Map stamped or printed by the said Mr. Senex, on the Margin of some large Skins of Parchment, and the said Draft engrost, for six several Parts of the said Articles of Agreement, three to be kept by the said Lord Baltimore, and three to be kept by the Plaintiffs which being done, this Deponent was personally present on or about the 10th of May 1732, and did then see the Defendant and Plaintiffs respectively sign, seal, and as their several Acts and Deeds, deliver the Parchment Articles of Agreement, of that Date, now produced and markt Par. (No 7) and the Title Baltimore, and the Names John Penn, Thomas Penn and Richard Penn, thereunto

severally set and subscribed, were and are of the proper Hand-writing of the Defendant, the Lord Baltimore, and of the Plaintiffs, severally and respectively; and thereupon the said Mr. Sharpe, and this Deponent, and several other Witnesses then present, did sign an Endorsement or Attestation, as Witnesses, on the Back of the said Articles, of the Execution of the same, in such manner as now appears thereon; and the Name Ferdinando John Paris, in such manner as now appears subscribed to such Endorsement or Attestation, was and is of this Deponent's own proper Hand-writing; and at the same time this Deponent did also see the said William Penn the Grandson, and Letitia Aubrey, Charles Fell, and Gulielma Maria Fell (all of whom the Deponent then very well knew) respectively sign, seal and deliver as their several and respective Acts and Deeds, the Deed-Poll or Endorsement, written on the Back of the said engrost Articles, which Deed-Poll or Endorsement also bears Date the same 10th of May 1732, and the several and respective Names, William Penn, Letitia Aubrey, Charles Fell and Gulielma Maria Fell, thereunto severally set and subscribed, were and are of the proper Hand-writings of them severally and respectively; And thereupon, the said Mr. Sharpe and this Deponent, and the like several other Witnesses (then present) who had witnessed the Execution of the said Articles of Agreement, did also subscribe their Names as Witnesses to the Execution of the said Deed-Poll or indorsement, in such manner as now appears at the foot of the same, and the Name Ferdinando John Paris thereunto also set and subscribed, was and is of the Deponent's own proper Hand-writing; and saith, that the said Articles being so executed, the Parties Plaintiffs and Defendant in this Cause, congratulated each other on the concluding such Agreement, and appeared to be, and exprest themselves extremely pleased at the settling the Disputes which had for so many Years before subsisted between the two Families, and dined together that day.

The same [Int. 17. fol. 260.]

Saith that, so far as he knows or believes, the first Meetings in order to the said Agreement, began entirely upon the Motion and Desire of the Defendant the Lord Baltimore, and not upon the Motion or Request of the Plaintiffs, but the Deponent perceived the Plaintiffs to be very willing to meet his Lordship, in order to treat for an Agreement between them; and the Deponent well knows that the Terms proposed for their Agreement, at such Meetings as before mentioned, were generally proposed by, and were afterwards insisted upon by the Lord Baltimore himself, and several of which were complied with,

and agreed to, by the Plaintiffs with great Reluctancy and Unwillingness on their Part, so far as ever this Deponent could judge, and as this Deponent verily believes; And this Deponent saw and heard the Defendant from time to time insist upon his general Demands, as before-mentioned, and express himself to the Purport that, if the Plaintiffs would not agree thereto, he must renew his Claim against them, as to the three lower Counties, or to the like, or some such Effect. Doth not remember any forcible or menacing Methods, made use of by any of the Parties, in order to procure any particular Terms, save that at one of the early Meetings in order to the said Agreement one of the Plaintiffs exprest a great deal of Regret and Concern at the very great Expence, which, he said, they had been put to, on the former Disputes and Contests; which Matter the Deponent did, and doth apprehend and believe the Defendant took some advantage of: for that afterwards the Deponent observed the Defendant seemed the more tenaciously to insist upon his Demands; and several times when the Plaintiffs appeared unwilling to agree to his Terms, he intimated that then he must renew his former Claims, or to some such Effect; which the Deponent then lookt upon as menacing a further Expence to the Plaintiffs, which one of them had exprest some Fear or Dread of; saith that the said Agreement was not hastily or suddenly, or by any Surprise whatever (to the Knowledge or Belief of this Deponent) concluded and settled, but, on the contrary, the said Agreement and the Terms of it, were, to the Deponent's Knowledge, under Deliberation, from on or about 3d June 1731, until very near the time of executing the said Articles, on or about 10th May 1732, which was about eleven Months; and saith that great Part of the said Time was taken up in apparent Delays and Procrastinations (as the Deponent then believed, and still believes the same to be) used on the Part of the Lord Baltimore and his Agents, which the Deponent then wondered at, and could not then discover what should be the meaning of, as his Lordship seemed very fond and desirous of the said Agreement; but the Meaning of which were afterwards explained (to the Deponent's Apprehension) by what the Lord Baltimore himself, at several times towards the latter Part of the said Time, declared in this Deponent's Hearing, when he delivered over the said new Demand, on, or about 29th March 1732, And again, when he executed the said Articles, on, or about 10th May 1732, from whence this Deponent did then collect and believe, and doth still really believe, that such Delays were taken, in order that the Lord Baltimore might have time to receive the Sense and Opinion of his Officers or Agents in Maryland upon such Agreement, before he would compleat or

execute the same. And saith, that he doth not remember any other Instance, of an Agreement between two private Parties, having proceeded with such great Caution and Ceremony, or such long Deliberations, as were used in order to the completing the said Articles of Agreement between the Parties to this Cause. nor doth this Deponent know or believe that any Imposition or Deceit was used or endeavoured to be used by the Plaintiffs, or any of them, towards the Defendant, in order to the obtaining the said Articles of Agreement.

Abraham Taylor, aged 37. [Lib. C. fol. 477. Int. 113. fol. 478.]

Says he was a subscribing Witness to, and proves the Execution of the Articles of Agreement of 10th May 1732, by all the Parties thereto, and was also a subscribing Witness, and proves the Execution by the Plaintiffs of their Commission to their Commissioners dated 12th May 1732.

The same. [Int. 114. fol. 481.]

Says, that he being called in order to be a Witness to the Articles, did go to the Place where it was executed, that the Plaintiffs and the rest of the Company met, before my Lord Baltimore came, and in some time afterwards he came; and excusing himself for so long Stay, desired they might proceed to the Business they had met about. That the said Deed was then read over, and had several Blanks in it, which were all filled up till the Reader came to a Blank, which had been left for the Penalty. That thereupon it was asked by Mr. Paris, as the Deponent remembers, what Sum should be inserted? To which after some time, Lord Baltimore said 'twas a Matter of Indifference to him whether it was 5000*l.* or 50,000*l.* Upon which the Parties agreed to have it 5000*l.* and it was accordingly so filled up. Farther says, that, after the Execution of the said Deed, the Lord Baltimore in Conversation then said, That there had been long Disputes between the said Parties, and he was very glad there was now an End of them; that he had received Letters from his Friends in Maryland, advising him that he might have had better Terms [why then, surely, they knew there, what these Terms were] but that he was perfectly satisfied with them. And then named one Mr. Lloyd, in Maryland, and, at the same time, James Logan of Pensilvania, and said, that, if they had had the Management of it he believed they would have protracted the Affair much longer; but he thought it much better to end it, as they had now done, and hoped to see Mr. Penn in America to make an end of the Affair, or to that Effect. And both Parties declared they were well satisfied with, and would execute the said Agreement. And further says, That he then collected from the said Lord Baltimore's discourse at that

time, that he the said Lord Baltimore had transmitted the Substance of the Agreement between him and the Plaintiffs to some of his Friends in Maryland, and had the Letters aforesaid in Answer thereto, but, notwithstanding those Letters, he was perfectly well satisfied with the said Agreement.

Serjeant William Wynne, aged 49. [Lib. A. fol. 164. Int. 29. fol. 166.]

Saith that he hath lookt upon the Paper Draft of Articles of Agreement, now produced and markt Par. (No 3.) and that the said produced Draft was left at the Deponent's late Chambers in the Middle-Temple, London, by Mr. Sharpe, or one of his Clerks, (as this Deponent believes) on the Behalf, and by the Order (as he believes) of the Defendant the Lord Baltimore for the Deponent's Perusal, which said Mr. Sharpe is, or was (as the Deponent believes) Agent or Solicitor for the said Defendant. And saith, that he does not remember, that he the Deponent was ever attended or consulted with, about the said produced Draft, either by the Plaintiffs in Person, or any of them, or by the said Defendant in Person, or by any Solicitors or Agents for the said Parties, or any, or either of them, and is inclined to believe that he was not; cannot remember how long the said produced Draft lay before this Deponent, but believes it might lie before him about 10 Days, or a Fortnight, and believes he did strike out several Parts of the said produced Draft, and make other Alterations therein with a Lead Pencil; some of which the Deponent observes have been since wrote over with ink: and after he had made such Alterations therein, he did approve of the said produced Draft on the Behalf of the Defendant, so far as the Deponent could, without speaking to the Defendant or his Solicitor, touching the same. And the Deponent saith, that he had never been applied to, or consulted by the Plaintiffs, or any of them, relating to any of their Affairs whatsoever before the said produced Draught was laid before this Deponent, as aforesaid, or since, but, this Deponent had several times before that time, been applied to, and consulted, by and on the Behalf of the said Defendant, in the Way of this Deponent's Profession, as a Council relating to the Defendant's Estate and Concerns in Maryland, and elsewhere: and in particular, the Deponent well remembers that he had been acquainted by the said Defendant of the long Disputes that had subsisted between the Defendant and his Ancestors as Proprietors of the Province of Maryland aforesaid, and the Plaintiffs and their Ancestors as Proprietors of the Province of Pensilvania relating to the Boundaries of their respective Provinces. And saith, that he was requested by the Defendant, in or about

May 1731, or 1732, (as near as this Deponent can recollect the time) to meet the Plaintiffs and their Agents, to try if they could come to any amicable Agreement, touching the said Boundaries; and the Deponent was accordingly present at several Meetings between the said Defendant and the said Mr. Sharpe, his Agent or Solicitor, and some of the Penns, whom the Deponent believes to be the Plaintiffs in this Cause, and Mr. Paris their Agent or Solicitor; and remembers that the said Parties did, at length, come to some Agreements, which was ordered to be reduced into Writing, but the Particulars thereof, the Deponent cannot, at this distance of time, recollect, any otherwise, than from the said produced Draft, which the Deponent believes was drawn, or prepared in consequence of such Meetings and Agreement, and soon afterwards laid before this Deponent to peruse and settle on the Behalf of the said Defendant as aforesaid; but who drew, or prepared the said produced Draught, he knows not.

Mary Senex, aged 52. [Lib. A. fol. 154. Int. 30. fol. 156.]

Well knew John Senex, late of Fleet-street, London, Mathematician, who was her late husband, and he died the latter End of December 1740, and knew him for about 18 or 20 Years before his Death, and was his Wife about 18 or 19 Years, of that time, and did frequently see him write, and is well acquainted with his Character or Manner of Hand-writing, and hath lookt upon the Paper-Writing contained in one Sheet now produced, and markt Par. (No 5.) and does verily believe that the two Pages of the Body of the said produced Paper-Writing, and the Name John Senex, set at the End thereof, is and are of the said John Senex's Hand-Writing.

This Exhibit is Mr. Senex's written Opinion upon the Articles.

Thomas Smith, aged 29 [Lib. A. fol. 158. Int. 30. fol. 159.]

Well knew John Senex, who is dead, and died latter End of December 1740, and knew him between 13 and 14 Years before his Death, and first knew him by being put Apprentice to him, and served him as such seven Years, and lived afterwards with him as his Journeyman, to the time of his Death, saith, he often saw the said John Senex write, and is well acquainted with his Character or Manner of Hand-writing, and hath lookt upon the Paper-writing contained in one Sheet, now produced and markt Par. (No 5.) and really believes the two Pages of the Body of the said produced Paper-Writing, and the Name John Senex set at the End thereof is and are of the said John Senex's own Hand-writing; He has also lookt upon the printed Map or Plan, upon Paper, now produced and markt Sen. (No. 1.) and remembers the engraving the Plate for the said pro-

duced Map or Plan, and it was graved by one Thomas Hutchinson, who was at that time Servant or Journeyman (but had been Apprentice) to the said John Senex, and who left the said John Senex's Service and Family 8 or 10 Years ago, or upwards; and saith, the said produced written Paper, and the said produced Map or Plan, have relation to each other, and both relate to one and the same Subject, (as he really believes) for the Deponent hath compared them together, and finds they relate to the same Lands, and that the dotted lines contained in the said produced printed Map or Plan, agree or correspond with the Boundaries described in the said produced written Paper. And the Deponent saith, that he hath likewise lookt upon the Parchment Deed now produced, markt Par. (No 7.) and upon the Map or Plan, stampd or printed on the Margin of that Deed, and has compared the said produced Paper printed Map or Plan, with the said printed Map or Plan upon the said produced Deed, and he does not find any Variation or Difference between them, but is well satisfied and assured they were both stampd or printed from one and the same Plate.

Thomas Hutchinson, aged 35. [Lib. A. fol. 147. Int. 30. fol. 148.]

Did well know Mr. John Senex, and the said John Senex is dead, and died about a Year and a half since, as this Deponent believes, and knew him for many Years; for the Deponent, about the Year 1720, was put Apprentice to the said John Senex, and lived with him as such for the Space of seven Years, and afterwards lived with him and workt for him as a Journeyman, for about three Years more, and during the Time this Deponent so lived with the said John Senex as aforesaid, this Deponent did frequently see him write, and thereby became well acquainted with his Character and Manner of Hand-writing; and saith, he hath lookt upon the Paper-Writing contained in one Sheet, now produced and markt Par. (No. 5.) and does verily believe, that the two Pages of the Body of the said produced Paper-Writing, and the Name John Senex set at the End thereof, is and are of the said John Senex's own Hand-writing; and saith, he hath also lookt upon the printed Map or Plan upon Paper now produced and markt Sen. (No 1.) and well remembers the engraving of the Plate for the said produced Map or Plan, for the same was graved by this Deponent, during the time he lived with the said Mr. Senex as aforesaid, but whether before or after the Expiration of his Apprenticeship, he does not at this Distance of Time remember; and saith, the said produced written Paper, and the said produced Map or Plan, have relation to each other, and both relate to one and the same Subject, as he most assuredly believes; for that the said produced written Paper seems

to the Deponent to contain Directions for drawing the said Map or Plan, and by comparing the same together, this Deponent finds they correspond with each other; And saith, that he hath likewise looked upon the Parchment Deed now produced, markt Par. (No 7.) and upon the Map or Plan stamped or printed on the Margin of that Deed, and has compared the aforesaid Paper printed Map or Plan with the said printed Map or Plan upon the said produced Deed, and most assuredly believes they were both stampd or printed off from one and the same Plate, for they are exact Copies of each other, and he does not find the least Variation or Difference between the one and the other.

Ferd. John Paris. [Lib. A. fol. 195. Int. 22. fol. 288.]

That upon or about the said 10th May 1732, when the said engrost Articles of Agreement were executed, the Deponent had before prepared, and did then produce to the said Lord Baltimore, and to his said Solicitor, the Copy or Draft of a Commission to be executed by the now Plaintiffs, for authorising seven Persons or some lesser Number to be therein named to carry the said Agreement into Execution in America, and which Draft of a Commission this Deponent verily believes was and is the Paper markt Par. (No 8.) now produced, and the said Lord Baltimore, and his Solicitor so well approved of the same, that they, or one of them, desired that this Deponent would get engrost like Commissions from the Lord Baltimore to be granted to a like Number of Commissioners on his Part, for the like purpose; and to enable this Deponent so to do, the said Mr. Sharpe on the Backside of the said Draft wrote down the Names of seven Persons or Commissioners for Maryland and accordingly this Deponent had both Setts of Commissions engrost by this Deponent's Clerk (with the before-mentioned Map or Plan stampd on the Margin of each of them also) one Sett of Commissions for the Plaintiffs to execute, to authorize their Commissioners and another Sett for the Defendant to execute to authorize his Commissioners to carry the said Articles into Execution in America, and doth verily believe there was no difference between the Commissions prepared for, and executed by the Plaintiffs for such a purpose as aforesaid, and those prepared for and executed by the Defendant for such purpose, save only in the Names, Titles, additions, and Descriptions of the Persons granting such Authority, and of the Persons to whom such Authority was granted, and in the Names of the respective Provinces and Counties.

20TH BRANCH, Of the several Proceedings of the Commissioners in America, Day by Day, in order to have carried the Agreement into Execution.

**James Steel [Lib. C. Fol. 559. Int. 67. Fol. 579.]*

Says that Governor Gordon and Messieurs Preston, Hamilton, Charles and the Affirmant, the Plaintiffs' Commissioners, and Governor Ogle and Messieurs Calvert, Loyd, Howard, Bennett and Ward, the Defendant's Commissioners, met, at New Town in Maryland, on 6th October 1732, which was the first Quorum of the said Commissioners, and adjourned to the next Morning.

**The same [Int 68. Fol. 580.]*

Says that the same Commissioners met, at Newtown, on 7th October 1732, when the Articles of Agreement between the Plaintiffs and Defendant, and their several Commissions to the Commissioners were first read. Whereupon the said Ogle objected, that he did not think the Pensilvania Commissioners had sufficient Power to proceed in the Execution of the said Articles, because some Branches of the Plaintiffs Family had not signed the Commission of the Plaintiffs Commissioners, To which it was replied, by some of the Plaintiffs Commissioners, that that was supplied, by an Indorsement, made on the Commissions or Articles, in the Hands of the Defendant's Commissioners, (but as well as the Affirmant remembers, it was in the Articles) whereby, some Persons, Branches of the said Family, had covenanted not to obstruct the Execution of the said Articles, or to that Effect; upon which, the said Samuel Ogle said, he waved it for the present: That the Commissioners on the Part of Pensilvania, then did desire and insist upon it, that Clerks might be appointed, to take Minutes of the Proceedings of all the said Commissioners, that what they had done might appear; To which it was answered, by the said Samuel Ogle, on the Behalf of the Defendant's Commissioners, that there was no Necessity for the same. That when the Plaintiffs Commissioners found they could not procure the Consent of the Defendant's Commissioners to admit Clerks for the Purpose aforesaid, the said Plaintiffs Commissioners then proposed to the Defendant's Commissioners, to appoint some of the Commissioners to take Minutes of their said Proceedings; whereupon, it was agreed that Robert Charles and Michael Howard aforesaid, should draw up two Minutes thereof, to be exchanged by the Commissioners on each Side; and then, the said Commissioners departed from the House where they sat, and went to the House of Mr. James Harris in Newtown aforesaid; That,

when the said Commissioners met, at the House of the said Harris, the Plaintiffs Commissioners brought David French one of the present Commissioners [for Examination of the Witnesses] into the Room, to be a Witness to the exchanging the said Minutes. That, soon after the said Commissioners came into the Room, the said Samuel Ogle, observing that the said David French was in the Room, asked whether he was a Commissioner? To which it was said he was not, but was a Gentleman the Plaintiffs Commissioners had brought with them, and then the said Samuel Ogle intimated, that if he was not a Commissioner, he had no Business there; whereupon the said David French withdrew. And further saith that, to the best of his Memory, Mr. James Hamilton was also present with the said David French; and the same Objection was made to him, at the same Time, which occasioned his withdrawing in like manner. That, afterwards the said Robert Charles and Michael Howard, did each produce a Minute, which were Copies of each other, taken in pursuance of the said Appointment; and thereupon, the Plaintiffs Commissioners did require and insist, that one or more of the Commissioners on each Side, should sign the same Minutes, and exchange them. That the Defendant's Commissioners did then refuse to sign the same; and the said Michael Howard, on refusing to sign the same, said he would not do it, for that he did not know, if he did, but he might be called over to England to answer for it. And further saith that he hath looked on the Paper Writing now shewn to him, marked No. A. 1. and believes the same is one of the Minutes aforesaid, which the Defendant's Commissioners refused to sign, as aforesaid. That he knows not of whose Hand Writing the same Paper is, but was informed it was wrote by a young Man belonging to the said Michael Howard; That afterwards upon an Adjournment being proposed the Plaintiffs Commissioners desired, that it might be to a short Day, in regard the Year was far spent, and the proper Time for the Business, the Commissioners had to do, would soon be over; To which the Defendants' Commissioners answered, that by Reason of the publick Affairs of the Province of Maryland, they could not attend before the 30th Day of the same Month of October; whereupon the Commissioners, on both Sides, agreed to adjourn, to that Day, at Newcastle Town on Delaware, as the most proper Place to begin the said Business.

Samuel Preston [Lib. B. Fol. 312. Int. 67. Fol. 347.]

Gives the very same Account, as is just now given by Mr. Steel.

Samuel Preston [Lib. B. Fol. 312. Int. 68. Fol. 355.]

Adds materially That at the said Meeting on 7th October it

was agreed by the Commissioners on both Sides, that the first thing necessary to be done was, to meet at Newcastle to mark out the Circle mentioned in the Agreement. That the Plaintiffs Commissioners were ready on 7th October, and desirous, to proceed to Newcastle, to run the said Circle; but believes the Defendant's Commissioners were not then prepared for the same; not apprehending it was design'd to proceed immediately to running any Lines; but then, shewed no Unwillingness to run the said Circle, and therefore all the Commissioners agreed to adjourn and meet at Newcastle aforesaid, on the 30th October, for the Purpose aforesaid. Says he has looked on the Paper A. No 1. which he takes to be the Minute drawn by Howard and Charles, mentioned in his Answer to 67 Int. Does not know of whose Writing it is, but believes it was writ by a young Man of Michael Howard's.

Note well.

The Articles of Agreement between the Parties themselves, stipulated expressly that those very Parties should give the Commissions to their Commissioners, and that Clause was translated verbatim into the Body of the Commission itself; yet, Mr. Ogle fancied ours was not a good Commission unless some other Persons had joined in our Commission; more than his own Master had stipulated for.

Benjamin Tasker the Defendant's Witness, cross examined [Lib. E. Fol. 49. Int. 22. Fol. 56, 23. Fol. 56, and 20. Fol. 63.]

Says there were Articles of Agreement between the Plaintiffs and Defendant, of — May 1732. and that Commissions did issue from the Plaintiffs and Defendant, and Commissioners were thereby appointed for marking and laying out the Limits and Bounds, and that he was present at divers of the Meetings between the Commissioners, in the Capacity of one of the Defendant's Commissioners; and to his best Remembrance there was no Proposal made, at any the Meetings he was present at, for appointing Clerks to take Minutes of the Commissioners Proceedings. But has heard, that at the first Meeting of the said Commissioners, which he was not at, such a Proposal was made for appointing such Clerks, but by whom it was made knows not, but believes it was not agreed to. And has heard it was then also proposed, (but by whom knows not) that a Commissioner on each Side should be appointed to take such Minutes, which was also not agreed to.

Samuel Preston [Lib. B. Fol. 312. Int. 69. Fol. 358.]

Says that Messieurs Ogle, Loyd, Howard, Bennett and Tasker, Commissioners for the Defendant, and all the seven Plaintiffs Commissioners met at Newcastle, on 30th October 1732, to pro-

ceed according to their former Agreement, to run the Circle about Newcastle, mentioned in the Agreement; but the Commissioners did not proceed therein, being stopt by the Defendant's Commissioners requiring to see the Grant of Pensilvania, and the Deeds of Feoffment, in the Articles mentioned, to see whether the said Circle, in them mentioned, agreed with the Circle mentioned in the Articles? The Plaintiffs Commissioners informed them they had met to execute the Articles of Agreement, and hot to examine the Rights of the Plaintiffs and Defendant. Yet, as it was in their Power, they would comply with their Desire; and, accordingly, one of the Plaintiffs Commissioners went to Philadelphia for them, and the Commissioners adjourned to next Day.

James Logan [*Lib. B. Fol. 76. Int. 69. Fol. 171.*]

Says much the same, and that the Commissioners were stopt from proceeding, by Governor Ogle's insisting that that Grant and those Deeds should be produced, which, says he, tho' manifestly needless, in mere Condescension to him was complied with.

**Jame Steel* [*Lib. B. Fol. 559. Int. 69. Fol. 588.*]

Says nearly the same Thing.

Andrew Hamilton.

Proves this also, but he does it by enumerating this and many other Passages, as Evidences, that the Defendant's Commissioners did never intend to proceed.

Note well,

It will come out presently that Lord Baltimore was then hourly expected to arrive in Maryland: This Charter, and these Deeds of Feoffment, might, very probably, have been in England: if so. this Artifice of Governor Ogle's had stopt the Affair a fine Time, but unfortunately, for him, they happen'd to be but 36 Miles off, at Philadelphia, and so might be, and were sent for, and that Attempt to spin out the Time defeated.

Benjamin Tasker the Defendant's Witness and Commissioner, being cross examined, [*Lib. E. Fol. 49. Int. 15. Fol. 65.*]

Says there was a Meeting of the Commissioners on 30th October on both Sides, at Newcastle, and, that they adjourned, but does not remember at whose Instance that Adjournment was proposed.

Samuel Preston [*Lib. B. Fol. 312. Int. 70. Fol. 360.*]

That the said Commissioners met at Newcastle 31st October in the Morning, and the Plaintiffs Commissioners produced the Grant of Pensilvania, and an Exemplification of the Deeds of

Feoffment, and upon comparing the said Articles with the said Grant and Deeds, it appeared the Description of the Circle in the said Grant and Deeds was truly recited in the Articles. Notwithstanding which, the Defendant's Commissioners insisted upon having Copies of the said descriptive Parts. And, altho' the Plaintiff's Commissioners thought that Demand unreasonable—Yet—to remove all Objections, they gave the Defendant's Commissioners those Copies. Then the Plaintiff's Commissioners proposed to begin to mark out the said Circle. To which the Defendant's Commissioners replied, They must take some time to consider thereof, and the Commissioners adjourned to the Afternoon.

James Logan [*Lib. B. Fol. 76. Int. 70. Fol. 173.*]

Confirms the same with this Addition, that the Defendant's Commissioners desired to have the Copies of the descriptive Parts signed by the Plaintiffs Commissioners, which was done.

**James Steel* [*Lib. C. Fol. 559. Int. 70. Fol. 590.*]

Was the Commissioner who went to fetch the Grant and Feoffments, and says the Exemplification of the Feoffments were under the Great Seal of New York. He also says that the Defendant's Commissioners demanded Copies of the descriptive Parts to be signed by the Plaintiffs Commissioners, and that it was objected to as entirely unnecessary, seeing the Defendant's Commissioners themselves had compared, and found the same exactly agreeable to the Articles; but that the Plaintiffs Commissioners gave them the required Copies signed.

Andrew Hamilton.

In his general Account says they at first demanded Copies of the whole deeds, which were very long.

Samuel Preston [*Lib. B. Fol. 312. Int. 71. Fol. 364.*]

That the Commissioners met again, at Newcastle, on said 31st October in the Afternoon. And the Plaintiffs Commissioners then proposing that the Commissioners should proceed to the marking and running out the Circle, as directed by the Agreement, the Defendant's Commissioners thereupon started a Difficulty about running the Circle, alledging that as the Articles had directed a Circle to be run, but had not fixed or ascertained where the Center should be, they apprehended it was not in their Power to fix such Center. The Plaintiffs Commissioners replied that, as both the Plaintiffs and Defendant had agreed, and had vested a Power in the Commissioners to mark and run out the Circle, they had likewise granted them the Means and full Power to find and fix a Center for such Circle, and to do everything necessary to the effectual running and compleating

such Circle. And, amongst their Debates, the Plaintiffs Commissioners said they apprehended that the said Articles of Agreement, and the Commissions thereupon, directed a Circle to be run at the Distance of 12 English Statute Miles from the said Town, without including the said Town. but they the Plaintiffs Commissioners were so desirous of, and intent upon, the carrying the said Articles into Execution, that, the Affirmant believes, they would have consented to fix a Center, almost in any Part of the Town, that would please the Defendant's Commissioners, to induce them to come into the running the said Circle. And, after some farther Debate, the Commissioners on each Side agreed to go out and walk about the Town, to see if they could find and agree upon a proper Place for such Centre; and accordingly, did walk about and view the Town with several of the principal inhabitants thereof, but not agreeing upon a Place for fixing such Center, they adjourned till next Morning.

James Logan [Lib. B. Fol. 76. Int. 71. Fol. 175.]

Gives much the like Account.

**James Steel* [Lib. C. Fol. 559. Int. 71. Fol. 593.]

Gives the like Account, only adds that the Defendant's Commissioners refused to proceed to run the Circle, for the Reasons above-mentioned. That the Plaintiffs Commissioners earnestly desired then to proceed, and told them it was then the Afternoon of the last Day which the Articles had limited for beginning the Work. That the Defendant's Commissioners answered that the same was begun. That the Plaintiffs Commissioners insisted that Surveyors should survey the Town, in order to find the Center of the Town. To which Mr. Ogle answered there was no Occasion thereof, and proposed that the Commissioners should walk about the Town, which they did.

Andrew Hamilton.

Confirms the same in another Place, very strongly, and says that it was proposed to fix the Court-house for the Center, which was not one third of the Breadth of the Town from the River Side, but all rejected.

Note well,

This new Instance of affected Chicanery. The Feoffment granted, first the Town, and then all the Lands within the Compass or Circle of 12 Miles about the Town; the Agreement was, that the Circle should be drawn at 12 Miles Distance from the Town. My Lord's own Mathematician, Mr. Senex, told him, in his written Opinion upon the Draft of that Agreement, that Newcastle was to be as a Center, and the Circle was to be drawn 12 Miles from the Town. Notwithstanding all this.

Mr. Ogle can't find a Center in the Town. To prevent a Dispute, we offer him a Center in the Town, and, by the way, take less than one Third of the Town to us, and give my Lord more than two Thirds of the Town itself, No! That won't do. Nay, what says Mr. Preston? Why that we were so desirous to proceed, that we would have agreed to fix a Center almost in any Part of the Town. But that would not do. For if they had agreed on a Center, then, they must have proceeded. But, it's plain, Ogle had resolved they never should proceed one single Step. There cannot possibly be any stronger Proof of it, than this. When we had agreed to put a Center in the Town, and desired that Surveyors might survey it, in order to find the Center of it, He answers, No! there is no Occasion.

Samuel Preston, [Lib. B. Fol. 312. Int 72. Fol. 368.]

That the said Commissioners met again at Newcastle on 1st November 1732, in the Morning. And then Governor Ogle declared, he having advised both with Mathematicians and Lawyers, was not satisfied that the Commissioners had any Power to find or fix a Center for the Circle directed to be run by their Commissions and the said Agreement. And said further, that the Defendant himself, being expected to arrive in Maryland in a very short Time, he, therefore desired that they might adjourn, in order that he and the rest of the Defendant's Commissioners, might have an Opportunity, to consult his Lordship thereon; and declared He did not doubt but my Lord would give some Directions to remove the Difficulty about the Center, or to that Effect. To which the Plaintiffs Commissioners answered, They were much averse to such adjournment, but, since the Defendant's Commissioners seemed so pressing for it, they therefore desired to know what Time the Defendant's Commissioners proposed to adjourn to? And that they might have Time to consider of it; and then they adjourned to the Afternoon.

James Logan [Lib. B. Fol. 76. Int. 72. Fol. 177.]

Gives the same Account, only says that Ogle expected my Lord's Arrival every Day.

Note well,

The only two of the Defendant's original Commissioners who are examined, swear positively they never contrived, along with my Lord, to defeat the Articles before such Time as the Commissioners differed with each other. How should they? The Articles and Commission executed 10 and 12 May 1732, did not get to America till Middle of August. Then, or within a few Days after my Lord must have set out from hence on his Voyage; for he was expected, and actually arrived in Mary-

land on 14 November 1732. A very pretty way they have taken to deny the Charge in our Bill, that they did, generally, contrive together, to defeat the Articles, namely, that they did not so contrive, before such a particular Time.

Samuel Preston, [*Lib. B. Fol. 312. Int. 73. Fol. 371.*]

That the said Commissioners met in the Afternoon, and the Plaintiffs Commissioners then proposed and insisted that full Minutes might be taken of the Commissioners Proceedings; but the Defendant's Commissioners objected thereto, and insisted they were entirely needless. And says the Defendant's Commissioners then proposed to have a long Adjournment, but he does not remember the precise Time, but remembers it was for a longer Time than the Plaintiffs Commissioners then cared to comply to, and then they adjourned to next Morning.

James Logan. [*Lib. B. Fol. 76. Int. 73. Fol. 180.*]

Confirms the foregoing, and says, the Maryland Commissioners absolutely refused to have full Minutes, and proposed only short Minutes, to enter the Meetings and Adjournments. He remembers the Time proposed for Adjournment, and says Governor Ogle proposed to adjourn for three Months. That the Pensilvania Commissioners did not agree thereto, but desired Time to consider of it, and then the Commissioners adjourned to next Day.

Samuel Preston, [*Lib. B. Fol. 312. Int. 74. fol. 373.*]

That the said Commissioners met the second of November 1732, at Newcastle, and the Plaintiffs Commissioners then declared that altho' they had come there with a full Intent and Expectation to enter upon the Business of executing their Commission, pursuant to the Agreement, and were prepared with their Artists, and in full Readiness to go upon it, yet as the Defendant's Commissioners were so pressing to have an Adjournment, and they the Plaintiffs Commissioners had so great an Opinion of the Defendant's Honour, that they did not doubt but he would give proper Directions to his Commissioners to remove the Difficulty that obstructed their proceedings in the said Business; They, therefore would comply to gratify the Defendant's Commissioners in such Adjournment. And to the best of his Remembrance there was a Paper or Minute prepared by the Plaintiffs Commissioners of the Purport above said, and which was then publickly read at this Meeting by the Plaintiffs Commissioners, or some of them.

James Logan, [*Lib. B. Fol. 76. Int. 74. Fol. 182.*]

Confirms the foregoing Account.

Andrew Hamilton.

In his Account, given in another Form, confirms it also.

NOTE,—The Defendant's Commissioners have huddled up a short Minute to serve their turn; of a Meeting as upon 30th October, and Adjournment to 1 February; to obviate which, please to take the following Answer.

Samuel Preston, [Lib. B. Fol. 312. Int. 75. fol. 375.]

That the several Transactions already mentioned by him, which are said to have happened, on 30 and 31st October, and 1 and 2 November 1732. at Newcastle, did happen on those several Days, and not on 30th October only. Says, He did not take any Minutes of the Proceedings of the Commissioners at Newcastle, but believes Messieurs Hamilton, Logan, and Charles took them. Can't say they were taken immediately after their several Meetings, but they were daily taken and shewn to all the Plaintiffs Commissioners, during the several Meetings of all the said Commissioners, and were by the said Plaintiff's Commissioners approved of. Does not know who wrote the said Minutes, but believes it was Mr. Charles; and says, that on said 2d November one of the Plaintiffs Commissioners produced to the Defendant's Commissioners certain Minutes, which had been taken and kept by the Plaintiffs Commissioners and Mr. Logan, or Charles. read the same to the Defendant's Commissioners, and has lookt on the Paper markt C, and knows not of whose Hand-writing the Body of it is, which is not signed, but takes it to be a Copy of the said Minutes which were read by the Plaintiffs Commissioners to the Defendant's Commissioners as aforesaid, and which he verily believes were true Minutes of the Proceedings of all the Commissioners at Newcastle, as the said Minutes purported to be. Says, that after reading the said Minutes, the Plaintiff's Commissioners askt the Defendant's Commissioners whether they had any Objections to make to the Truth of those Minutes? Governour Ogle replied, the Plaintiffs Commissioners had a right to take Minutes, but he had nothing to say to them; yet, if he had taken those Minutes, he could have placed the Arguments used by the Defendant's Commissioners in a stronger Light, or to that Effect; and then said, he had taken Minutes, and pulled a Paper out of his Pocket, which he read, purporting the Meetings and Adjournment of the Commissioners at Newtown in Maryland, and at Newcastle; to which the Plaintiffs Commissioners objected, as being two short and imperfect, or Words to that Effect.

James Logan, [Lib. B. Fol. 76. Int. 75. Fol. 183.]

Confirms all the forgoing. And says He did take Minutes, and that they were read to the Defendant's Commissioners, and the Paper C. is a true Copy of them, and contains true Minutes

of the said Commissioners, from their first Meeting on 30th October to their Adjournment on 2d November.

Samuel Preston, [*Lib. B. Fol. 312. Int. 76. Fol. 331.*]

Says that on Governor Ogle's producing and reading the said Minutes, the Plaintiffs Commissioners objected to those Minutes, as containing something alledged to be said by the Plaintiffs Commissioners, which had never been said by them, but he can't remember the Particulars.

James Logan, [*Lib. B. Fol. 76. Int. 76. Fol. 187.*]

Who has just now said that he took Minutes. He says, that on 2d November Governor Ogle produced a Paper of Notes or Minutes, and gave it to another of the Defendant's Commissioners to read, and the same was read, and the Import was, that five of the Defendant's Commissioners having met five of the Plaintiffs Commissioners, in pursuance of their last Adjournment at Newtown, on the 30th of October, in order to proceed to the Execution of the 2d Article of the said Agreement, the Defendant's Commissioners desired a Sight of the Charter and Deeds of Feoffment; to which one of the Plaintiffs Commissioners replied, that the Draft of the Commissions being perused by Counsel learned in the Law, and signed by the Proprietors on both Sides, the Recitals therein were sufficient, whether true or false. To which Minutes, when read, Mr. Hamilton, one of the Plaintiffs Commissioners, who had strenuously argued against the Necessity of such Demand of seeing the said Charter and Deeds, immediately answered, that there were no such Words as (whether true or false) used by him, or by any other of the Plaintiffs Commissioners: which was unanimously confirmed by the whole Number of the Plaintiffs Commissioners then present. And, to this the said Governor Ogle replying, that, if the said Words were not used, yet, what was said, was consequential of it, or to that Effect, put up his said Paper of Minutes in his Pocket, without offering to amend the same; and observing the Adjournment was agreed to, the Company rose and departed.

Andrew Hamilton.

In his Account very largely confirms the foregoing.

NOTE—Hitherto the Commissioners have met only six several Days, viz. at Newtown on 6th and 7th October, and at Newcastle on 30th, 31st October, and 1st and 2d November. It may not be amiss to recapitulate the several Steps taken by Governor Ogle; 1st, Objected to our Commission, tho' granted according to the Agreement with my Lord. 2d, Refused to admit Clerks on the 7th October. 3d, Would not exchange the Minutes while our Witnesses Mr. French and Mr.

James Hamilton were present. 4th, Refused to let a Commissioner on each side sign a Minute. 5th, In the proper Time for running the Lines, and that Season was expiring, proposed and insisted on an Adjournment from 7 to 30 October. 6th, Stopt the Work, and insisted to see the Charter and Feoffments. 7th, Wanted Copies of those Deeds after he had himself examined them. 8th, Would have those Copies signed by our Commissioners. 9th, Would not proceed then. they must take Time to consider. 10th, He had no Power to find the Center. 11th, Refused to let the Town be survey'd, to find the Center of it, there was no Occasion he said. 12th, Refused our Offer to give him a Center in the Town, tho' we took less than one third, and gave him more than two thirds of the Benefit of the Town, and would have given him almost any Place. 13th, Proposes and insists on a three Months Adjournment, because my Lord was daily expected in Maryland. 14th, Again refused that full Minutes should be taken. 15th When his false Minutes were objected to, and in effect own'd by himself to be false, never amended them.

All this during, indeed, only four Days' meetings, for the first Day, they did nothing at all, and the sixth Day. they only adjourned.

Samuel Preston, [Lib. B. Fol. 312. Int. 77. Fol. 382.]

Has heard and believes that Lord Baltimore arrived in Maryland in November 1732, and continued in America till June or July following.

James Logan, [Lib. B. Fol. 76. Int. 77. Fol. 191.]

He was informed and believes Lord Baltimore arrived in Maryland in a short Time after the said 2d of November 1732, and as he thinks before the End of that Month; and for a Reason of his belief, says that Governor Gordon about latter end of November, or beginning of December, received a Letter from the Defendant dated in Maryland, which Letter the Affirmant saw, and it appeared to be wrote by, or by Order of the Defendant, and to be sigend by him. And the Defendant as he was informed and believes, sailed from Maryland, on his Return from Maryland, some time in or about July following.

My Lord in his own Answer, Admits he arrived in New-England in September, and in Maryland 14 November 1732.

Samuel Preston, [Lib. B. Fol. 312. Int. 78. Fol. 382.]

Says that Samuel Ogle and Calvert, Howard, Ward, Tasker and Jennings (who appeared by Vertue of a new Commission) the Defendant's Commissioners, and Mr. Norris, this Affirmant, and Messrs Hamilton, Steel and Charles, as the Plaintiffs Commissioners, met, at Newcastle, on 1 February 1732, on which Day

no Business was done by the Commissioners, but they adjourned to next Day, at the Court-House in said Town.

**James Steel, [Lib. C. Fol. 559. Int. 78. Fol. 597.]*

Confirms the same.

Samuel Preston, [Lib. B. Fol. 312. Int. 79. Fol. 383.]

Says, that the said Commissioners met, at the Court-House at Newcastle, on 2d February: when the Plaintiffs Commissioners asked the Defendant's Commissioners, whether Lord Baltimore had given them any Directions concerning finding a Center for the Circle? They answered that he had not: for that he having entered into an Agreement, and delegated his Power to his Commissioners, he left the same entirely to them, and would not interfere. And the Affirmant believes the Defendant's Commissioners did then say, they had not sufficient Power to fix the said Center, as they had formerly said, and that it was waved. Thereupon the Defendant's Commissioners said, Let us see whether we can agree upon the Circle? And then insisted that, by the Circle in the Articles mentioned, was intended a Circle of 12 Miles Circumference only. To which the Plaintiffs Commissioners replied, that they had nothing to do but to follow the Directions of the said Articles and their Commissions: By which it appeared that the said Circle was to be drawn at 12 English Statute Miles distance from the Town of Newcastle, and which they understood, was a Circle of 12 Miles Radius. And the Plaintiffs Commissioners did insist that the Defendant's Commissioners should declare, whether they thought they had full Power to execute the said Agreement, or not? But does not remember what particular Answer they gave to it. But the Defendant's Commissioners did shew a Readiness to run out such a Circle as they had said was intended by the said Articles, but did not think they had sufficient Power, by their Commission and the said Articles, to run the said Circle at 12 Miles Distance from the Town.

Andrew Hamilton,

In his Deposition speaks largely hereto.

Samuel Preston, [Lib. B. Fol. 312. Int. 80. Fol. 387.]

That the said Commissioners met, again, that Afternoon, and as well as he remembers it was proposed by the Defendant's Commissioners, seeing the Commissioners on each side could not agree concerning the Dimensions of the Circle, that they should consult Mathematicians thereon. Whereupon the Plaintiffs Commissioners, altho' they thought they had not Power to depart from the Words of the Articles, upon the Opinions of any Mathematicians whatsoever, yet, considering they could not procure joint Minutes of their Proceedings to be taken, in

order to get some Evidence concerning those Proceedings, they consented to consult Mathematicians, as the Defendant's Commissioners required. That then, the Plaintiffs Commissioners insisted that the Question, to be proposed to the Mathematicians, should be reduced to Writing: which after some Hesitation, was consented to, and a short Question was accordingly wrote by one of the Defendant's Commissioners. That then the Commissioners agreed to adjourn till next Morning, and some of the Commissioners then desired the Adjournment might be till eleven, and others desired it might be till ten o'clock, but the Affirmant cannot tell which of the Hours was agreed to. But says, the usual Hour of adjourning to before that time, had been generally, ten of the Clock; altho' upon an Adjournment to that Hour, the Day before, the Defendant's Commissioners had not attended till 11 o'Clock. And says, that the Plaintiffs Commissioners at those Meetings at Newcastle, had many times required of the Defendant's Commissioners to admit Clerks, to take Minutes of all their Proceedings, but the said Defendant's Commissioners always refused to consent thereto, and therefore, no Clerks were appointed to attend the said Commissioners, or to take down the said Minutes.

* *James Steel*, [*Lib. C. Fol. 559. Int. 80. Fol. 598.*]

Says positively that, at this Meeting the Defendant's Commissioners again alledged that, as the Articles did not sufficiently fix the Center, they had not sufficient Power, by their Commission to fix the said Center. Then he gives the like Account as Mr. Preston. And adds that at this Meeting, as well as at many others before, it was insisted upon and required, by the Plaintiffs Commissioners, that Clerks should be admitted, to take joint Minutes, of the whole Proceedings and Actings, which was always, hitherto, and at this Time also, denied and refused by the Defendant's Commissioners. They always alledged that the same was needless and unnecessary. He remembers nothing more that past at this Meeting, but that the Commissioners adjourn'd till next Morning, some of them saying till ten, others eleven o'Clock.

Andrew Hamilton,

Speaks largely to the foregoing.

Samuel Preston, [*Lib. B. Fol. 312. Int. 81. Fol. 392.*]

Saith that Isaac Norris, this Affirmant Preston and James Steel, Commissioners for the Plaintiffs, and also, a Quorum of the Defendant's Commissioners, met at the Court-House, about eleven o'Clock in the Forenoon of 3 February 1732, pursuant to their last Adjournment; but Messrs Hamilton and Charles,

two others of the Plaintiffs Commissioners then at Newcastle, were not then come into the Room. And Governor Ogle, immediately, proposing that, as there was then a Quorum of the Commissioners on each side present, they should proceed to Business: to which the Plaintiffs Commissioners then present answer'd, that there were some others of the Plaintiffs Commissioners that they expected would be there instantly, and just then, the said James Steel, happening to be called out of the Room, and Governor Ogle observing it, said to the Pennsylvania Commissioners, Gentlemen, I observed just now you were a Quorum, but now here are not enough to go upon Business. Whereupon, the said Isaac Norris stepped out of the Room to send away the said James Steel (as the said Isaac Norris at his Return, told this Affirmant) to hasten the said Andrew Hamilton and Robert Charles; which the said Governor Ogle, likewise observing, said, to the Affirmant, Now, here is another of your Commissioners gone, and seemed to be much displeased at the Plaintiffs Commissioners for making him wait so long, and Governor Ogle, some short time after, looking upon his Watch, said, it was past twelve o'Clock, and that as there was not then a Quorum of the Plaintiffs Commissioners there to proceed upon the Business, he would stay no longer, and went away out of the Room, and the rest of the Maryland Commissioners soon after followed him; and saith that, when Governor Ogle looked at his Watch, and said it was past twelve o'Clock, as above mentioned, the Affirmant, at the same time, look'd upon his Watch, and very well remembers, that it then wanted near an Half an Hour of 12 o'Clock, and that he told the said Governor Ogle so; but the said Governor Ogle then told this Affirmant, that his Watch was too slow, tho' this Affirmant is satisfied his Watch was pretty right, he having, that Morning, set it by a good Clock. And saith, that, just as the said Governor Ogle went out of the Room, the said Isaac Norris (having staid out but a few Minutes) returned. And saith that those of the Plaintiffs Commissioners who were at Newcastle on the said 3d of February, and did not attend the Meeting of the Commissioners that Forenoon, did not, (as he is well assured) wilfully absent themselves, with intention not to meet; for that they were, all that Forenoon, and likewise some part of the Night before, employed, in preparing a Writing which they thought necessary to be read and delivered to the Maryland Commissioners at that Meeting. And saith, that immediately after the Maryland Commissioners had so left the Room, and the said Isaac Norris and the Affirmant were also going away from thence (to the best of the Affirmant's Remembrance) they met the said James Steel and some other of the said Pennsylvania Commis-

sioners, who had been absent as aforesaid, coming up to the said Room, in order to attend the said Meeting of the Commissioners; which the Affirmant believes was not above a quarter of an Hour after the said James Steel, had so left the said Room, to fetch the said Pensylvania Commissioners as afore set forth. And further saith that, upon the said James Steel and Isaac Norris going out of the Room, and Governor Ogle's offering thereupon to break up the Meeting aforesaid, the Affirmant desired the said Governor Ogle not to be uneasy, for that he the Affirmant believed the said James Steel and Isaac Norris were only gone out to hasten the said other Pensylvania Commissioners, or to that Effect, and saith, that at the Meeting of the Commissioners on the day before this Meeting, the Pensylvania Commissioners had waited for the Maryland Commissioners as long after the Hour of Adjournment, as they had waited for them the said Pensylvania Commissioners at this Meeting. And verily believes, that the genuine true Reason why the said Maryland Commissioners did so depart and break up the said Meeting, was, that they were not desirous, nor did intend, to proceed upon putting into Execution, the Business they were directed to do by their Commissions, and the said Articles of Agreement: for that in the Afternoon of the said 3d of February, when this Affirmant and the said Isaac Norris went to the said Maryland Commissioners to desire them to meet again, Governor Ogle then complained that the said Pensylvania Commissioners had been negligent in Meeting, and said he apprehended it was done with Design; that, if the Case was his own, he would be very ready to oblige any Gentlemen, but as it was an Affair of the Lord Baltimore's and he conceived the Plaintiffs Commissioners had given him an Advantage, he should not look upon it to be just to his Constituent, if he did not make use of it, or to that Effect.

**James Steel, [Lib. C. Fol. 559. Int. 81. Fol. 601.]*

That a Quorum of the Commissioners for the Plaintiffs, viz. Isaac Norris, Samuel Preston, and this Affirmant and also a Quorum of the Commissioners for the Defendant met, at the Court-House, between 10 and 11 of the Clock in the Forenoon of the 3d of February 1732, but remembers that Andrew Hamilton and Robert Charles, two other of the Plaintiffs Commissioners, tho' then in the said Town, were not present when the rest of the said Commissioners first met as aforesaid, that Forenoon. And saith that the said Andrew Hamilton and Robert Charles, did not wilfully stay away, or absent themselves, from that Meeting, with Intention not to meet, they being, all that Morning, and the Forenoon, busy and employed in drawing up

and copying, a Paper, in answer to a Query the Defendant's Commissioners had given in to the Plaintiffs Commissioners at their Meeting the Day before, and for other Purposes therein comprised, which was thought necessary by the Plaintiffs Commissioners to be laid before the Defendant's Commissioners at that Meeting. That soon after the said Quorums of the Commissioners met as aforesaid, and before they sat down to Business, a Messenger came into the Room from the said Andrew Hamilton and Robert Charles to this Affirmant, desiring him to bring them the Articles of Agreement between the Plaintiffs and the Defendant of the 10th of May 1732, which was then, and had for some time, before, been, in this Affirmant's Custody, the same being then wanted by the said Andrew Hamilton and Robert Charles, to supply and fill up some Blanks in the said papers, which they were preparing as aforesaid. And thereupon the Affirmant (having first acquainted the rest of the said Commissioners then present with the said Message, and the Reason, of his going) went out of the Room where the said Commissioners were met. And the said Isaac Norris followed him to the Door, to desire him to hasten the said Andrew Hamilton and Robert Charles to the said Meeting; and then the said Isaac Norris immediately returned into the Room to the rest of the said Commissioners. And this Affirmant proceeded, with what speed he could, to the said Andrew Hamilton and Robert Charles, and after staying about an Hour with them, to fill up the Blanks and compleat the said Paper, this Affirmant returned, with the said Andrew Hamilton and Robert Charles, in order to attend and go upon Business with the rest of the said Commissioners at that Meeting; and being got up as far as the Green, near the said Court-House, they there met the said Isaac Norris and Samuel Preston, coming out of the said Court House who, telling them, the Maryland Commissioners were gone away from the Court-House, they were obliged to turn back, tho' it was then but between 11 and 12 o'clock. And the Affirmant saith, that the Reason alledged by the Defendant's Commissioners for their breaking up the said Meeting was, (as the Affirmant is informed) because there was not a sufficient Quorum of the Plaintiffs Commissioners to go upon Business, occasioned by this Affirmant's going out of the Room upon the said Message, to the said Andrew Hamilton and Robert Charles as aforesaid. That the Affirmant very well remembers that the Plaintiff's Commissioners had, the day before, waited on the Defendant's Commissioners after the Hour of Adjournment, full as long a Time, as this Affirmant was absent from the said Meeting in the Forenoon of the said 3d of February, on the said Message to the said Hamilton and Charles as before set forth. And saith that,

as he this Affirmant conceives and believes, the true and genuine Reason why the said Maryland Commissioners had so broke up and departed from the said Meeting as aforesaid was, because they imagined, that thro' this Affirmants Absence on the said Message, and there not being a Quorum of the Plaintiffs Commissioners left, they had got such an Advantage, as they could thereby avoid proceeding any farther in the Execution of their Commission and the said Articles. And further saith that, after the said Defendant's Commissioners so breaking up the said Meeting, he this Affirmant was told, by the said Isaac Norris and Samuel Preston, that they had continued with the said Maryland Commissioners during the Affirmant's Absence on the Message, aforesaid, and had entreated and very much pressed the said Maryland Commissioners to stay, and not depart from the said Meeting, for that he the said Affirmant, and the rest of the Plaintiffs said Commissioners would soon be there, or to that Effect.

Andrew Hamilton,

In his Account, speaks largely to some of the foregoing Matters.

Samuel Preston, [Lib. B. Fol. 312. Int. 119. Fol. 448.]

That in his Opinion the Spring and Fall are the properest Seasons for running out Lines in the Woods, when such Running is to be continued for Weeks or Months at a Time. Has not been conversant with surveying in the Woods, and therefore can't say how long Time it would require to run and mark out the Circle and Lines mentioned in the Articles; but verily believes there was sufficient Time to do the same, between the first Meeting of the Commissioners, and the 25 of December 1733. That, when the Commissioners on both sides met on 1st, 2d, 3d February 1732, at Newcastle, in order to carry the said Articles into Execution, it was very cold and severe Weather. And in this Affirmant's Opinion, the Absence of the Commissioners, on either side, for an Hour or two on said 3d of February, could not be such a Hindrance, as to prevent the Execution of the Articles, within the Time limited by the same.

**James Steel, [Lib. C. Fol. 559. Int. 119. Fol. 576.]*

He also says the Spring and Fall are the properest Seasons, when the Work is to continue for a length of Time, and believes that, to run and mark out the Circle, and the several Lines agreed on by the Articles, would at least require three Months. He says that on 1st, 2d, and 3d February 1732, it was extreme cold and severe Weather, and the Creeks being frozen over.

and the Ground covered with Snow, and that the Absence, or Non-Attendance, of the Commissioners, on either side, for an Hour or two beyond the Hour of the Adjournment, on any of those Days, could not, in his Judgment, be such a Prejudice or Hindrance to the Execution of the Articles, as that the said Circle and Lines could not, by reason of such Absence of Non-attendance, be run, markt or laid out, within the Time limited by the Articles.

Benjamin Tasker, the Defendant's. Commissioner and Witness, but cross examined [Lib. E. fol. 49. Int. 19. fol. 70.]

Is but little acquainted with, and can't well judge, what are the fittest Seasons to run and mark Lines in the Woods, but believes the Month of October is the properest Season for that Work. That the running and marking the Circle and Lines, pursuant to the Articles, would, in his Judgment, have taken near 3 Months. That at the Meetings of the Commissioners at Newcastle on 1st, 2d, 3d February, the Weather was very unpleasant, there being then a great Snow upon the Ground, and a Thaw upon that. That the Non-attendance, or Absence of the Commissioners on either side, for an Hour or two beyond the Time of Adjournment, could not make any Difference, or prevent the running the Lines within the Time for that purpose limited in the Agreement.

NOTE—Why then, did they, so often, refuse our repeated Requests to proceed?

**James Steel, [Lib. C. fol. 559. Int. 82. fol. 610.]*

That very soon after breaking up of the Defendant's Commissioners as aforesaid, the Plaintiffs Commissioners sent a verbal Message by Robert Charles one of the Plaintiffs Commissioners, who was accompanied by John Georges deceased, to the Defendant's Commissioners, acquainting them, that some Business might be done before Dinner was ready, and therefore they desired them to meet the Plaintiffs Commissioners, immediately, in the said Court House, to proceed in the said Business; That in a short time after, the said Robert Charles and Georges returned, and the said Charles said he had acquainted Mr. Ogle and some others of the Defendant's Commissioners, with the said Message, and that Mr. Ogle had refused to meet the Plaintiffs Commissioners, alledging for Reason, that if any Advantage had accrued to Lord Baltimore, by the Failure of the Plaintiffs Commissioners that Morning, he could not answer it to his Lordship to give it up.

Andrew Hamilton,

Speaks to this first verbal Message.

John Georges's

Deposition signed by him, he being proved dead, you have among the Written Evidence.

Samuel Preston [*Lib. B. fol. 312. Int. 83. fol. 408.*] **James Steel*
[*Lib. C. fol. 559. Int. 83. fol. 612.*]

Say that, after the Return of Robert Charles, all the Plaintiffs Commissioners, except Mr. Hamilton who was indisposed, and all the Defendant's Commissioners, dined together, at Newcastle, in a friendly manner, that 3d of February.

Samuel Preston, [*Lib. B. fol. 312. Int. 82. fol. 403.*] and [*Int. 84. fol. 409.*]

Says that on the same Day, in the Afternoon, about 4 o'Clock, Mr. Norris and the Affirmant waited on three of the Defendant's Commissioners, of which Ogle and Jennings were two, at their Lodgings in the Town, and informed them, that what had happened in the Morning, was occasioned by the Indisposition of one of the Plaintiffs Commissioners with the Gout, and other Accidents, and not with any design to avoid the Execution of the Commission, and therefore requested them to meet the Plaintiffs Commissioners, immediately, or that Afternoon, to proceed in the Execution of the Commission: To which Ogle answered, that the Plaintiffs Commissioners had been negligent in not meeting, and he apprehended it was done with Design; That, if the Case was his own, he should be very glad to oblige any Gentleman, but as it was an Affair of Lord Baltimore's, and he conceived the Plaintiffs Commissioners had given him an Advantage, he should not look upon it to be just to his Constituent, if he did not make the Use of it, or to that effect. Upon this some of the Pensilvania Commissioners, of which Mr. Hamilton was one, came into the Room, and then Jennings took up his Hat and walkt out of the Room. [Very artfully done! For, otherwise, there would then have been a Quorum on each Side] Then Mr. Hamilton said, Gentlemen, We have done no Business, this Morning. I have been at the Place of Meeting, and expected to see you there, shall we go now about the Business? To which Mr. Ogle replied, the Plaintiffs Commissioners had been negligent, and therefore the Defendant's Commissioners did not intend to meet them again. To this Mr. Hamilton said, that the Plaintiffs Commissioners had waited for the Defendant's Commissioners, the Day before, as long a time as they had waited for them on that, and yet, had not offered to take any Advantage, and therefore did not think it was fair for the Maryland Commissioners to attempt to take this Advantage now. And there upon Mr. Hamilton delivered a Paper-Writing to Mr. Ogle, which had been prepared to be

delivered to the Defendant's Commissioners in the Morning; upon which Paper, when Ogle had slightly lookt, he said here take your Paper, I have nothing to do with it. To which Mr. Hamilton replied, Sir. It's yours, you have it; and thereupon, Ogle flung the said Paper down in a Chair or Window, and the Plaintiff Commissioners departed. And says that that Paper contained Reasons, given by the Plaintiffs Commissioners, why the Circle should be extended to the Distance of 12 Miles from the Town, and a Declaration of the Willingness of the Plaintiffs Commissioners to proceed in doing the same, and a peremptory Demand of the Defendant's Commissioners, whether they would join therein? And that Paper was signed by Messieurs Norris, Hamilton, Steel, Charles, and this Affirmant Preston.

**James Steel, [Lib. C. fol. 559. Int. 84. fol. 612.]*

Confirms the last foregoing Account, and adds, that when Ogle would have returned the Paper, he said they could do nothing, there not being a Quorum of the Defendant's Commissioners present. And says that when Hamilton offered the Paper to Ogle, Jennings took up his Hat, and walkt out of the Room, which this Witness verily believes was done to avoid a Quorum of the Defendant's Commissioners being present, lest this should be construed a Meeting of the Commissioners. He also confirms Mr. Preston throughout. And adds, moreover, that Mr. Hamilton requested Ogle and Calvert to appoint any Place for the immediate Meeting of the Commissioners on both sides, and the Plaintiffs Commissioners would meet them according to such Appointment; but that Ogle replied, he could not consent to any other Meeting, because it would wave the Advantage he conceived Lord Baltimore had gained. That, thereupon, Mr. Hamilton offered to Ogle and Calvert a Written Notice signed by the Plaintiffs Commissioners, and directed to all the Defendant's Commissioners, requiring them to meet the Plaintiffs Commissioners at 6 o'Clock that Evening, at the said Court House; which Notice Ogle and Calvert refusing to receive. Hamilton laid it down, on the Table or Chair, before them, and then the Plaintiffs Commissioners departed. And says, that very soon afterwards he was informed and believes, that the rest of the Defendant's Commissioners were acquainted with the said Service of the said Notice, and were required to attend according to the Purport of the same Notice.

Andrew Hamilton.

Confirms all this, after Dinner, on the 3d of February.

Benjamin Tasker, the Defendant's Witness and Commissioner cross-examined [Lib. B. fol. 49. Int. 36. fol. 68.]

That after the Commissioners of Maryland parted from two

of the Pensilvania Commissioners, between the Hours of Twelve and One, on 3d February 1732, at the Court-House in Newcastle, this Deponent, and as he heard, the rest of the Maryland Commissioners then at Newcastle, were in the Evening of that same Day requested by the Pensilvania Commissioners, to meet again, in order to proceed on the Business of running the Lines according to the Articles of Agreement.

Benjamin Eastburn, [Lib. C. Fol. 678. Int. 84. Fol. 711.]

Says that on 3d February 1732, about Three in the Afternoon, he heard Robert Charles, one of the Plaintiffs Commissioners read a written Paper to Ogle and Calvert, two of the Defendant's Commissioners, purporting to be a Notice from the Plaintiffs Commissioners to the Defendant's Commissioners, to meet the Plaintiffs Commissioners, that Evening, at 6 o'Clock, at the Court House. That after reading the said Paper the said Charles offered to deliver the same to the said Ogle, which the said Ogle refusing to receive, the said Charles laid the same down on a Chair. This Deponent does not know by whom the said Paper was signed. And very soon after, this Witness heard Charles give verbal Notice to Ward, Howard, Tasker and Jennings, four of the Defendant's Commissioners, to meet the Plaintiffs Commissioners that Evening at Six o'Clock in the said Court-House; To which some of them replied, It's very well, Gentlemen, or to that effect. That the Plaintiffs Commissioners afterwards did meet, in the said Court-House, at the appointed Hour, and there continued two or three Hours, but the Defendant's Commissioners or any of them did not appear there.

Samuel Preston, [Lib. B. fol. 312. Int. 85. Fol. 411.]

Says that four of the Plaintiffs Commissioners on the said 3d of February signed Notices to Ogle, Calvert, Howard, Ward, Tasker, and to the best of his Memory, Jennings, the Defendant's Commissioners then in Newcastle, requiring them to meet the Plaintiffs Commissioners at the Court House at 6 that Evening; which Notices he believes were delivered to three or more of the Defendant's Commissioners. He also says that the Plaintiffs Commissioners met at the Court House, at the said appointed Hour, and there attended till about 8; but the Defendant's Commissioners, or any of them, did not appear, or to his Knowledge, send any Message. He is not certain at what Hour the Notices were said to be delivered, but says it was some time before Six. And adds, that the Defendant's Commissioners continued in Newcastle from the time of serving the said Notices until the 4th Day of the said Month.

**James Steel, [Lib. C. fol. 559. Int. 85. fol. 620.]*

Says that the Plaintiffs Commissioners met at Six as aforesaid and attended till 8, and the Defendant's Commissioners, though then in the Town, neither came or sent. That the said 3d of February happened on a Saturday. And he adds That, after the Plaintiffs Commissioners returned from the said Court-House at Eight o'Clock the said Evening, they thinking it proper and necessary to sign and serve the Defendant's Commissioners, who were then still in the Town with fresh Notices, to meet them on the Monday following, at 10 in the Forenoon, at the said Court-House, sent Robert Charles and Mr. Georges, in order to serve such Notices upon all the Defendant's said Commissioners; but Ogle refusing to be seen by Charles (as he upon his Return to the Plaintiffs Commissioners informed them) they, thereupon, sent a Person again, that same Evening, to serve the said new Notices upon the rest of the said Maryland Commissioners; and which were accordingly that same Evening personally served upon the said Charles, Calvert, Jennings and Tasker (as the said Person upon his Return acquainted this Affirmant and the rest of the Plaintiffs Commissioners) and that the said Howard had also a Copy of the same Notice left for him, at his Lodgings, and which afterwards came to his Hand that same Evening, as this Affirmant believes, and was informed.

Samuel Preston, [Lib. B. Fol. 312. Int. 86. Fol. 413.]

He confirms what is said by Mr. Steel, rather more positively, as to the signing and serving that new Notice, for Monday the 5th of February.

John George.

Signed Deposition (he being dead) amongst the written Evidence, speaks to this Notice.

Andrew Hamilton.

In his Account also speaks largely hereof.

Benjamin Tasker, the Defendant's Witness and Commissioner cross-examined [Lib. E. fol. 49. Int. 31. fol. 69.]

Says that this Deponent, and as he believes, the rest of the Maryland Commissioners, were on the said 3d Day of February, served with a Notice in Writing to meet the Pennsylvania Commissioners for the Purposes aforesaid, on the then Monday following. And says that he did not avoid being served with such Notice, nor did any of the rest of the Maryland Commissioners, to his Knowledge, endeavour to avoid being served with such Notice.

Did they attend according to the Notice?

That our Depositions will immediately answer.

Gideon Griffith [*Lib. B. fol. 279. Int. 118. fol. 280.*]

Has heard that there were Articles of Agreement between the Parties, and has seen and read a printed Paper, which he was informed was a Copy thereof, and has heard that such and such Persons were appointed Commissioners on each side respectively, for executing the said Agreement. And says that Messieurs Norris, Hamilton, Charles, Steel, and another Person, whose Name he does not remember, as Commissioners on the Part of the Plaintiffs, met the said Ward, Tasker, and some others, whose Names he can't remember, at the Court House in Newcastle on 1st or 2d of February 1732, in order to carry the said Agreement into execution, as he heard; but knows not whether they proceeded in the Execution of the same, or not. And says he has neither heard or believes that the Pensilvania Commissioners when at Newcastle in the said Month of February, ever did refuse to meet the Defendant's Commissioners at the usual Place of Meeting in the said Town, to proceed in the Execution of the said Agreement, but has heard that the Defendant's Commissioners did then and there refuse to meet the Plaintiffs Commissioners, because the said Steel one of the Plaintiffs Commissioners had neglected to meet at the Time or Hour appointed for Meeting, as he had heard. [Fol. 285.] That afterwards, on 3d February 1732, this Deponent offered to deliver three several Notices in Writing, signed by the said Plaintiffs Commissioners, to Jennings, Tasker and one other (who he thinks was Michael Howard) Commissioners on the Defendant's Part, purporting, that as the Maryland Commissioners had refused meeting the Pensilvania Commissioners according to a former Notice given, the Plaintiffs Commissioners were willing to meet them on Monday the 5th of that Instant November, at 10 in the Forenoon, to proceed to the Execution of their respective Commissions, which Notices the said Jennings, Tasker, and the said other Person refused to receive, saying they would not receive any Papers from the Pensilvania Commissioners. That the Deponent then acquainted the said Jennings, &c. that the Pensilvania Commissioners had desired him to acquaint them, that they would meet them at another time, in order to proceed to Business, or to that effect, and thereupon left the said three written Notices, on a Table, in the same Room with the said Jennings, Tasker, and the said other Commissioner, whereon the said Jennings was then writing. And says that, next Morning, being Sunday 4th February aforesaid, the Defendant's Commissioners went out of Newcastle, and did not meet the Plaintiffs Commissioners on the said 5th of February but the Pensilvania Commissioners did attend at the same Town on that day, according to the Notice aforesaid.

Samuel Preston [Lib. B. fol. 312. Int. 87. fol. 415.]

Says that 4 or 5 of the Plaintiffs Commissioners met at the Court-House on the said 5th of February pursuant to the said Appointment, but none of the Defendant's Commissioners attended, they having left the Town the day before, as the Affirmant understood and believes.

**James Steel.* [Lib. C. fol. 559. Int. 87. fol. 623.]

Confirms Mr. Preston, with this Addition, that the Plaintiffs Commissioners when they so met, staid till 12 at Noon.

You will please to remember, that we in our Bill fol. 304. particularly charge, that upon 15th February 1732, after the Maryland Commissioners had run away from Newcastle and refused to meet our Commissioners, though so many times required, both by verbal and by written Notices, my Lord himself writ a Letter to Governor Gordon, one of our Commissioners (who is proved to be since dead) reviving the Meetings, and appointing, by his own Act and Deed, that we should run away to Joppa in order to fix a Center somewhere in Newcastle Town, and appointing that new Meeting for the 7th of May. Mr. Gordon being proved to be dead, we could not get that Letter to prove, but my Lord himself in his Answer fol. 316. precisely and sufficiently admits his writing and sending that Letter.

We were then to suppose that he really intended the Commissioners should meet again to execute the Articles.

But you'll please to remember the Copy of the written Letter from Governor Ogle of the 8th of March markt No. 2. and the Copy of the printed Advertisement of the 21st of March 1732, markt No. 1. (both pending that Appointment of my Lord's) which are mentioned, according to their Dates, in the state of our written Evidence.

Now we come to apply our Proofs to them, and to bring them home to my Lord Baltimore himself, and to shew what a Part he acted while he himself had revived the Meetings.

Hugh Jones, of Maryland, Clerk, my Lord's own Witness, cross-examined [Lib. E. fol. 5. Int. 12. fol. 7.]

Is uncertain whether he has seen any written Advertisement of the same tenor or Date of the printed Exhibit markt No. 1, but has seen a printed Advertisement of the same Tenor and Date therewith. That he saw it in the Year 1732, when my Lord Baltimore was in Maryland: That he received it from Lord Baltimore, or from William Parks, then a Printer at Annapolis, but is uncertain from which of them.

The Same [Int. 13. fol. 8.]

To the best of his Remembrance, he did send one or more Advertisements of the Tenor and Date of that produced, to be set up upon the Borders of the three lower Counties; and that he sent them, at the Request of Lord Baltimore, with Intent to notify to any People who held Lands within the Province of Maryland [He tells us by and by, that he thinks the lower Counties, and even Philadelphia itself, is in Maryland] under any other than the Proprietor of Maryland, that they should apply in Time to Matthew Tilghman Ward, the Agent of the same Proprietor.

The Same [Int. 14. fol. 9.]

That by the Words (the Right Honourable the Lord Proprietor) in the said Exhibit No 1. The Lord Baltimore was meant. And apprehends that the Persons described in the said Exhibit by the Words (pretending to hold Lands by vertue of any Patents or Grants not deriving the same from the present Proprietor or his Ancestors) were meant such as held Lands by Grants from the Duke of York, or the Proprietors of Pensilvania, or by Purchases from the Indians, which had been taken up under Maryland Rights before.

Note, Benjamin Tasker [Lib. E. fol. 49 Int. 14. fol. 53.]

Says that by the Words Lord Proprietor in the said Exhibit, was intended the Defendant in this Cause.

The Same [Int. 15. fol. 10.]

That he knows there is an Officer in Maryland, called and known by the Name of the Lord Proprietor's Agent, whose Business he is not acquainted with, either in respect to Lord Baltimore, or others.

The Same [Int. 16. fol. 11.]

That he apprehends that Matthew Tilghman Ward, was Agent to Lord Baltimore on 8th March 1732, and supposes that John Ross was at that time Deputy to the said Agent.

The Same [Int. 32. fol. 11.]

That Lord Baltimore did arrive in Maryland, from Great Britain, as he believes in the latter End of the Year 1732, and resided chiefly at Annapolis while he staid in the same Province, but does not remember when he departed from the said Province on his Voyage to Great Britain.

The Same [Int. 33. fol. 12.]

That Samuel Ogle is generally reputed to be Governor of Maryland under Lord Baltimore, and was esteemed as Governor about 7 Months before Lord Baltimore's Arrival in Maryland, and from the Time of Lord Baltimore's Departure from the Province up this Time. And that the said Samuel Ogle resided

principally at Annapolis in the Years 1731, 1732 and 1733, and ever since, to this Time, except Part of a Summer in Baltimore County.

The Same [Int. 34. fol. 13.]

That he knows the Lord Baltimore and Samuel Ogle both lived in Annapolis a Part of the Time that Lord Baltimore was in Maryland, and believes that they principally resided there during all that time.

The last Matter is Confirmed by Benjamin Tasker [Lib. E. fol. 49. Int. 34. fol. 72.]

The Same [Int. 35. fol. 14.]

That he is acquainted with Governor Ogle's Hand-Writing, and has received several Letters from him, particularly one dated, as he believes, about 8th March 1732. Which Letter, or a true Copy of it, he sent either to Mr. Loyd, or Mr. Vanbeber, to shew to some of their Friends in Newcastle County. That such sending the said Letter, or a Copy thereof, was, as he remembers, at the Instance of the said Governor Ogle, with Intent to be shewn to Friends of the said Loyd or Vanbeber in Newcastle County. That some time after he wrote an Account of what he had done, to Governor Ogle, but received no Answer concerning the same, nor had any other Conversation with him, that he remembers relating thereto.

The Same [Int. 36. fol. 15.]

That the Hand-writing, for Attestation at the Bottom of the Copy of the Letter now shewn to him, No. 2. is the Hand writing of the Deponent. And the whole Endorsement upon the said Letter was wrote by this Deponent. And the name Hugh Jones is of this Deponent's Hand-writing, and stands for his proper name. That by the Word (Friends) in the Endorsement of the said Letter, he meant the Goodwins and others who lived near Apoquinomy in Newcastle County, on Lands which he supposed had formerly been taken up under Maryland Rights, but were then possest under other Rights.

The Same, [Int. 48. fol. 17.]

That he neither holds or claims any Lands which, he apprehends, will fall within the Province of Pensilvania or the three lower Counties, if the Lines which were intended to be run by the Articles should be establisht or if the Circle should be run at the Distance of 12 Miles from the Town. And apprehends he shall not be a Gainer if the Bounds of Maryland should be extended farther Northward than now supposed to be, or the three lower Counties should be adjudged to Lord Baltimore.

What a dishonest Proceeding this, while under a new Ap-

pointment for meeting to execute the Articles made by my Lord Baltimore himself! This is the Candor and Fairness they used.

This shews whether my Lord, and his Governor and Commissioners did, or did not, endeavour to avoid the Articles, by any other means except that of failing personally to appear at the Times appointed for Meetings. And this confirms most strongly what all our Commissioners say in Evidence on that Head by and by.

Samuel Preston, [Lib. B. fol. 312. Int. 90. fol. 419.]

Says that all the Plaintiffs Commissioners upon 28th March 1733, signed a Notice in Writing to the Defendant's Commissioners requiring them to meet the Plaintiffs Commissioners at Newcastle the 16th of April then next, which notice was delivered to William Biddle, who, he believes, (from an Affidavit of Biddle's that he has seen) did serve the same or Copies thereof, upon all the Defendant's Commissioners in Maryland, and in a few Days after the said 16th Day of March. And says that, immediately on Biddle's Return from Maryland he gave to some of the Plaintiffs Commissioners a cross Notice from the Defendant's Commissioners requiring the Plaintiffs Commissioners to meet the Defendant's Commissioners at Joppa in Maryland on 7th May.

William Biddle, [Lib. C. fol. 474. Int. 106. fol. 475.]

Has lookt on the Paper Writing markt B. 5. and says it contains a true Copy of seven Original Papers which were delivered by Governor Gordon and the rest of the Plaintiffs Commissioners who have subscribed the same, to him on said 28th March, to be served on the Defendant's Commissioners in Maryland. That he afterwards on 2d April following, served six of the same, upon Ogle, Calvert, Howard, Jennings, Tasker and Ward severally, but did not serve Loyd, he being dead or absent. And he, on the 3d of the said April, at Annapolis in Maryland, made Oath, before one of the Magistrates of the Provincial Court there of such several Services.

Samuel Preston, [Lib. B. fol. 312. Int. 91. fol. 421.]

Says that a Quorum of the Plaintiffs Commissioners met at Newcastle on 16th April according to the Notice given to the Defendant's Commissioners; but the Defendant's Commissioners, or any of them did not appear there.

Samuel Preston, [Lib. B. fol. 312. Int. 88. fol. 417.]

Believes Lord Baltimore was in Maryland on the 5th and 15th Days of February 1732.

Samuel Preston, [Lib. B. fol. 312. Int. 89. fol. 417.]

Knows the Town of Joppa in Maryland, which he believes is about fifty or sixty Miles from Newcastle Town; between which Places there are several Fords which are difficult to pass after great Rains, besides the great River of Susquehannah. That the said Town of Joppa is a small Village with but few Houses in it, and can afford but very ordinary Entertainment for Gentlemen or Strangers. That, at the former Meetings of the Commissioners at Newtown, and Newcastle it was agreed, by the said Commissioners, on both sides, that the first thing necessary to be done was to run the Circle about the Town of Newcastle, and, in order thereto, that a Center for the said Circle was to be fixed. And says that Joppa was not a convenient Place to fix the said Center, and, as he apprehends, it could not be done there with Certainty.

Samuel Preston, [Lib. B. fol. 312. Int. 92. fol. 422.]

That a Quorum of the Plaintiffs Commissioners met at the Town of Joppa in Maryland, on 7th May 1733. That going thither was very inconvenient; because it was a long Journey thither, the Roads very bad, their Entertainment at the said Town very indifferent, and it was quite out of the Way of the Business the Commissioners had to do. That a Quorum of the Defendant's Commissioners met them at Joppa on 7th and 8th May. That on the 2d or 3d Days of the Commissioners Meetings at Joppa, it was proposed, by one of the Defendant's Commissioners, seeing they could not agree upon running the Circle at Newcastle aforesaid, to adjourn to some other Place. And, after several Proposals and Debates thereon, it was, on the 9th of May, agreed to adjourn to Philadelphia, which is about ninety Miles distant from Joppa. Which was agreed to by the Plaintiffs Commissioners, in regard to the Convenience of the Defendant's Commissioners, who were to wait on Lord Baltimore in his way to Philadelphia. Believes that Adjournment was to 21st May, but it was agreed, if the Defendant's Commissioners, who were to wait on him to Burlington, could not return from thence in convenient time to Philadelphia, then the Defendant's Commissioners were to give the Plaintiffs Commissioners Notice to meet at Philadelphia, in some short time afterwards, and no Advantage was to be taken of their not meeting on the Day to which they adjourned. And believes it was also proposed and agreed to, that the Maryland Commissioners should not be staid at Philadelphia, from returning to Maryland, above one Day, and that their next Meeting should be in the County of Newcastle, on the 18th of June then next following.

Jeremiah Langhorne, [Lib. C. fol. 719. Int. 92. fol. 726.]

Says the Defendant's Commissioners did meet the Plaintiffs Commissioners at Joppa, on 7th May; and it was very inconvenient for the Plaintiffs Commissioners to meet them at that Place, where he conceives nothing could be done to put the Articles in Execution. That the Commissioners met at Joppa again, on 8th May. That on the 2d Day of the Meeting at Joppa, several Disputes arose between them, concerning the Dimensions of the Circle, and the Defendant's Commissioners insisted it should be a Circle whose Circumference was 12 Miles, and the Plaintiffs Commissioners insisted it ought to be a Circle of 12 Miles Radius. That thereupon, one of the Defendant's Commissioners (Mr. Ogle, according to his best Memory) proposed, seeing they could not agree upon the Extent of the Circle, to adjourn immediately to Cape Hinlopen, to run the Line from thence, which seemed to be generally agreed to: And then the Plaintiffs Commissioners proposed to go immediately to the said Cape, and said they had brought Artists with them, who would run the said Line. [Observe, we were always ready to do any thing] To which Ogle replied, that the Word, immediately as used by him, was to be understood with some Qualification, and that it meant only to go there, as soon as they conveniently might. [Well! when was that to be?] And added, that Lord Baltimore was in Chesopeak Bay, in his Way to Burlington in New Jersey, whither they were obliged to wait on his Lordship. Then some of the Defendant's Commissioners proposed to adjourn to Philadelphia, which is about 100 Miles distant from Joppa; which being agreed to by the Plaintiffs Commissioners, on the 9th of May, they adjourned accordingly to some Day in that Month, as the Affirmant believes, but does not remember the particular Day.

Benjamin Tasker, the Defendant's Witness and Commissioner, being cross-examined, [Lib. E. fol. 49. Int. 16. fol. 66.]

Names the Commissioners who met on both sides at Joppa on 7, 8, and 9th May, and that they adjourned to Mr. Norris's House at Philadelphia, but at whose Instance, or what the Reasons assigned for such Adjournment were, does not particularly remember, but believes such Adjournment was made at the Instance of the Maryland Commissioners.

Jeremiah Langhorne, [Lib. C. fol. 719. Int. 93. fol. 731.]

He was present at the Meeting between Quorums of the respective Commissioners at Joppa, which as well as he remembers was on 7th May 1733. That before any Debates between them, Mr. Ogle observing the Affirmant there, askt who the Affirmant was? And said he did not know that any Person,

except the Commissioners, had any Business there. Whereupon Jennings, one of the Defendant's Commissioners said, perhaps the Gentleman is a Commissioner. To which Mr. Hamilton, one of the Plaintiffs Commissioners, replied. No, he is not a Commissioner, but he is a Gentleman that the Plaintiffs Commissioners have brought with them to be a Witness, and prevent any Misrepresentations of their Proceedings. That then the said Ogle, after some more Objections to any Stranger's being present during their Debates, said he was contented, provided they would permit some other Person, on behalf of Maryland, to be present likewise. To which Mr. Hamilton replied with all his heart, as many as he pleased. Whereupon one Beale was called in by the Defendant's Commissioners. And thereupon, the Debate, mentioned by this Affirmant in Answer to the 92d Interrogatory, concerning the Dimensions of the Circle arose between the Commissioners; Whereupon the Plaintiffs Commissioners insisted that the Arguments on the same should be reduced to Writing by the Commissioners on each side, which was accordingly done by delivering written Papers to each other. To all, or many of which, this Affirmant was a Witness, by subscribing his Name thereto. That the Reason given by the Plaintiffs Commissioners why the said Arguments should be reduced into Writing, were to prevent any Misrepresentations on either side, of what was said therein.

The Same to the [94th Int. fol. 734.]

Says he was present also at the Meeting of the Commissioners on the 8th of May.

The Same to the [97th Interrogatory, fol. 735.]

Says that Quorums of the said Commissioners met at Joppa on the 9th of May.

James Logan, [Lib. B. fol. 76. Int. 95. fol. 192.]

Says that beside running the Circular Line, there were, in his Judgment, five strait Lines, necessary to be run in order to compleat the carrying into Execution the Agreement, and that not more than two of those strait Lines would be affected or altered, according as the said Circle should be drawn at twelve, or at less than two, Miles Distance from the Town of Newcastle.

Samuel Preston, [Lib. B. fol. 312. Int. 98. fol. 428.]

Says the Defendant's Commissioners did not return from Burlington by 21st May, but gave notice they could not conveniently meet that Day, but would meet at Philadelphia on 26th May. Accordingly Quorums of the Commissioners met at Philadelphia on that Day. When, nothing material was done,

but the Defendant's Commissioners then proposed to adjourn to the 3d of September, alledging for Reasons, that they were obliged to attend on Lord Baltimore down to Virginia, on his Way to England, and particularly, that as Lord Baltimore had taken the Government of Maryland upon him since his Arrival, 'twas necessary for Mr. Ogle to go down to Virginia, to be qualified, a-new, before the Governor of Virginia, in order to re-assume the said Government upon Lord Baltimore's Departure. For which Reasons, and on Consideration that the Business of their Commissions could not well be done in the mean time, the Woods being full of Leaves, and the Season hot, the Plaintiffs Commissioners consented to said Proposal, and they adjourned accordingly, to meet at Newcastle Town on 3d September.

James Logan, [*Lib. B. fol. 76. Int. 98. fol. 193.*]

Is rather stronger in the last foregoing Account; for he assigns no other Reason for that very long Adjournment from May to September, than only the Engagements the Maryland Commissioners pretended to be under, on their side.

Samuel Preston, [*Lib. B. fol. 312. Int. 99. fol. 431.*]

That five of the Defendant's Commissioners (amongst which was John Ross by vertne of a new Commission) met six of the Plaintiffs Commissioners at Newcastle Town, on 3d September 1733. and there continued several Days. During which Days, upon several Debates, the Defendant's Commissioners did declare that they could agree to run out no other Circle than one whose Circumference was twelve Miles; and the Plaintiffs Commissioners insisted that the same ought to be a Circle of 12 Miles Radius from the said Town. Whereupon, the Plaintiffs Commissioners did require the Defendant's Commissioners to state their Proposals and Arguments in Writing, and they would answer them in the same manner, which was accordingly done, by delivering several written Papers to each other. But the Commissioners not agreeing, a Proposition was made, to the best of the Affirmant's Memory, by one of the Defendant's Commissioners to adjourn, to a Time he has forgot; but it was afterwards agreed by all the Commissioners to adjourn to the 14th of November, then next following, at Newcastle Town aforesaid.

James Logan, [*Lib. B. fol. 76. Int. 99. fol. 197.*]

That Quorums of the Commissioners met at Newcastle on 3d, 4th, 5th and 6th September (Governor Ogle being sick, as it was said) and during those Days several Adjournments were made, and divers Papers past between the Commissioners on each side. And says, that on the 5th or 6th of September it

being proposed by the Defendant's Commissioners to adjourn the next Meeting to 14th November, the same was, after some Debates, at length, agreed to by the Plaintiffs Commissioners. *Samuel Preston*, [*Lib. B. fol. 312. Int. 100. fol. 434.*]

That Ogle, Tasker, Jennings, Harris and Ross, Commissioners for the Defendant, and Messieurs Norris, Logan, Hamilton, Steel and the Affirmant, Plaintiffs Commissioners, met at Newcastle Town, on 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24th, November 1733. And during those days the respective Commissioners for the Plaintiffs and Defendant did not re ede from, but declared they respectively adhered to their former several Opinions, concerning the Dimensions of the Circle. And says there was some verbal Proposals made by the Commissioners on each side, but the principal Part of their Debates were transacted by written Papers, delivered to each other. That during the said several Meetings, and as he believes either on 14, 15, or 16th November, some of the Defendant's Commissioners verbally declared, that it was to no purpose for the Commissioners to continue longer together, and proposed, that the Commissioners should discontinue their Meetings, and depart without further Adjournment. To which the Plaintiffs Commissioners did not consent or agree.

James Logan, [*Lib. B. fol. 76. Int. 100. fol. 199.*]

Fully and strongly confirms the foregoing, and says, that Mr. Ogle repeatedly proposed upon 14, 15, and 16 November, to break up, and discontinue the Meetings, and depart without Adjournment, and that the Plaintiffs Commissioners in general, did during those three Days, decline to agree to such Proposal.

The Same, [*Int. 101. fol. 203.*]

Says that at the Meeting of the said Commissioners on or about 19th November, it was repeatedly alledged and declared to be the Opinion of the Defendant's Commissioners, that no other Consequence could arise from the Difference of Judgment between them and the Plaintiffs Commissioners than that either the Commissioners should continue at Newcastle till 25th December then next, without running the Circle, or depart from Newcastle without further Adjournment.

The Same, [*Int. 102. fol. 204.*]

That at the said Commissioners meeting on or about 23d November, it was proposed by Ogle or Jennings (but which he does not now remember) on the Part of the Defendant's Commissioners, that as the Commissioners had continued so long together, in exchanging of Papers, and were still as far off from agreeing as ever, they should then depart. And thereupon, it was agreed by the Commissioners on both sides that some par-

ting Minute should be prepared against the next Day, and that the same should be drawn up by Jennings and the Affirmant.

Samuel Preston, [*Lib. B. fol. 312. Int. 102. fol. 437.*]

Says to the like effect, but does not remember who of the Commissioners made that Proposal.

The Same, [*Int. 103. fol. 438.*]

Says that the Plaintiffs and Defendant's Commissioners did, at Newcastle, on 24th November, 1733, sign a parting Minute dated that Day, and then departed without further Adjournment.

James Logan, [*Lib. B. fol. 76. Int. 103. fol. 438.*]

Says the same.

Samuel Preston, [*Lib. B. fol. 312. Int. 66. fol. 340.*]

Says that he knows that several Persons were appointed, and acted as Commissioners on the Plaintiffs Part, in order to carry into Execution the Articles of 10th May 1732, viz. Patrick Gordon, Lieutenant-Governor of Pensylvania, who died in August 1736, Isaac Norris, who died between 5 and 6 Years ago, and this Affirmant, James Logan, Andrew Hamilton and James Steel, who are still living, and Robert Charles, who departed about a Year ago for Great Britain, where the Affirmant supposes he is still living. That he hath lookt upon the Paper-Book or Writing marked Letter (A) now produced and which hath a Great Seal hanging to it, and knows the said Seal to be the Great Seal of Pensylvania, and hath lookt towards the latter End of the said Paper-Book, in Page 90, where there is a Date, viz. (Philadelphia, January 10th 1733-4) And saith that the Names, P. Gordon, I. Norris, S. Preston, J. Logan, A. Hamilton, J. Steel, and R. Charles, there set, are their several proper Hand-writings, and were so wrote and subscribed by them respectively, in this Affirmant's Presence. And saith he has also looked upon the last Page of the said Book, and is well acquainted with the several Hand-writings of the said Gordon, Norris, Logan, Hamilton, Steel and Charles, having frequently seen them write, and saith their Names, there subscribed, are their respective Hand-writings and were wrote and subscribed by them severally, in this Affirmants Presence. And that Samuel Preston, there also set and subscribed, is the Affirmant's own Hand writing, and was by him there subscribed, at the same time with the rest of the said Subscribers. And saith the Name Thomas Græme there also subscribed, is the proper Hand-writing of Thomas Græme, who on 20th June 1734, was, and is still one of the principal Judges of Pensylvania, and then had,

and still has, Power to administer Oaths to, and take Affirmations from Persons in Pensilvania aforesaid; And saith that the several Names following, viz. J. White, S. Mickle, J. Richmond, and W. Spafford, there also appearing to be subscribed, are their several Hand-writings, and were there wrote and subscribed by them respectively, in this Affirmant's Presence. And saith that on 20th June 1734 the said Gordon, Hamilton, and Charles, made Oath, and the said Norris, the Affirmant, Logan, and Steel, being Quakers, did solemnly affirm to the Truth of the Affidavit and Affirmation comprized and wrote in the said last Page of the said Book, before the said Thomas Græme, and in the Presence of the said White, Mickle, Richmond and Spafford and saith the Occasion of the Affidavit and Affirmation being so made and taken was from an Apprehension that there would be some Complaint made to the King and Council, for a Failure in the Execution of the said Articles of Agreement of 10th May 1732.

James Logan, [Lib. B. fol. 76. Int. 66. fol. 163.]

Proves the same in the self-same Words as Mr. Preston, it being the Return or Report then made, on 10th January 1733, and sworn and affirmed to on 20th June 1734, containing most minutely the like Account of the Commissioners Proceedings, in order to have carried the Articles into Execution, as are now given by them in Detail, upon a fresh Examination in the Cause as to the Proceedings and Behaviour of the Commissioners at every one of the several Meetings from 6th October 1732, to 24th November 1733.

**James Steel*, [Lib. C. fol. 559. Int. 66. fol. 565.]

Also proves the same Report in the self-same Words as Mr. Preston and Mr. Logan.

Andrew Hamilton, [Lib. C. fol. 775. Int. 117. fol. 874.]

Says that the said Report is a true Narrative of the most material Proceedings of the said Commissioners. And says that the Minutes of the several Transactions of the Commissioners which are related and set forth therein were carefully taken by the Plaintiffs Commissioners, or some of them, at the Time, or within a Day of the respective Times, on which the said several Transactions happened. And that the Copies of Papers at large, set forth, and comprized in the said Report, are true Copies of the several Original Papers which past between the Commissioners on both sides, of which they purport to be Copies, and then gives the like Account as the former, of the making up, signing, swearing, and affirming to that Report, and the Occasion thereof, as all the other living Commissioners have before done.

Thomas Grame, [*Lib. C. fol. 666. Int. 117. fol. 667.*]

Proves that all the Commissioners signed their Affidavit, and respectively swore and affirmed to the same, before him, on 20th June 1734, and that he was in such Office, and had Power to administer Oaths and Affirmations.

But if there be any Occasion, it is easier to turn to the fresh Examinations in the Cause.

Samuel Preston, [*Lib. B. fol. 312. Int. 62. fol. 452.*]

That he was one of the Commissioners appointed by the Plaintiffs to run and make the Lines mentioned in the Agreement, and as such, did attend all the Meetings had between the Plaintiffs and Defendants Commissioners for the Execution of the said Articles. And says, he never received, directly or indirectly, from, or on behalf of the Plaintiffs, any Order, Direction or Instruction or Intimation to retard, evade, frustrate, avoid or impede the Execution of the said Agreement. And that neither he, nor any other of the Plaintiffs Commissioners, to the Knowledge or Belief of the Affirmant, did, at any time, or in any manner, endeavour to retard, avoid, or frustrate the Execution of the said Agreement.

James Logan, [*Lib. B. fol. 76. Int. 62. Fol. 159.*]

Was also one of the Plaintiffs Commissioners for the Purpose aforesaid, and attended the Execution of the said Commission three several Times [He means Sessions] at Newcastle, and once at Philadelphia [Note, he being infirm, did not go down to Newtown, nor yet to Joppa, in Maryland] That neither the Affirmant, or any of the Plaintiffs Commissioners, to his Knowledge or Belief, ever did, at any Time, or in any manner, endeavour to retard, avoid, or frustrate the Execution of the said Commission; nor did he receive directly or indirectly, at any Time, from, or on behalf of the Plaintiffs, any Order, Direction, Instruction or Intimation to retard, delay, evade, avoid, frustrate, or impede the Execution of the said Commission.

Andrew Hamilton, [*Lib. C. fol. 775. Int. 62. fol. 776.*]

That he was appointed one of the Plaintiffs Commissioners, and attended all the Meetings of the Commissioners that were held on that Business from time to time (except that on the 3d of February 1732) That he never received, directly or indirectly, any Order, Direction, Instruction or Intimation from, or on behalf of the Plaintiffs, or any of them, to retard, evade, avoid, frustrate or impede the Execution of the said Commission. But on the contrary, this Deponent and the rest of the Plaintiffs Commissioners, were several times, and very frequently, while the Execution of the said Commission was depending, desired and very much pressed, by the Plaintiff Thomas Penn, and

it was his constant Instructions to this Deponent and the rest of the Plaintiffs Commissioners, to use all the Dispatch and Candor they possibly could, to carry the said Agreement into Execution. Says he never did, in any manner, endeavour, or do any Act or Thing that he conceived could or would frustrate, avoid or hinder the Execution of the said Commissions; nor, to the best of his Knowledge and belief, did any of the rest of the Plaintiffs Commissioners endeavour or do any thing to frustrate, avoid or hinder the Execution of the same Commissions.

**James Steel, [Lib. C. Fol. 559. Int. 62. Fol. 561.]*

That he was appointed one of the Plaintiffs Commissioners, and did attend on all the Days that the Plaintiffs and Defendant's Commissioners met for that Purpose, (except the two last Days of their meeting) That he never did receive, directly or indirectly, from or on behalf of the Plaintiffs, any Order, Direction, Instruction, or Intimation to retard, evade, avoid, frustrate or impede the Execution of the said Commission; and that, neither he, nor to his Knowledge or Belief any other of the Plaintiffs, Commissioners, ever did, in any manner endeavour to avoid, retard or frustrate the Execution of the said Commission, but on the contrary, did all that was in their Powers to execute the same.

Note well.

We never had any more than our original seven Commissioners: two of which are proved to have been dead, and the third come for Europe, at the Time we examined our Witnesses, and we have examined every one of the other four, who concur precisely in this general Account at all Times whatsoever. On the other Hand, the Defendant chopt and changed his Commissioners till he made his original seven to be ten in Number; of those ten he has examined only three: against whom there are many Objections also: but as to this present Point, they are most carefully askt, and as cautiously answer, that they did not contrive along with the Defendant to avoid the Agreement at one particular Time when it was no way possible for them to have done it, at that Time.

Samuel Preston, [Lib. B. Fol. 312. Int. 63. Fol. 453.]

Says that Samuel Ogle, Charles Calvert, P. Loyd, M. Howard, M. T. Ward, R. Bennett, Benj. Tasker, E. Jennings, James Harris and John Ross [ten] were the Persons who, at several Times, appeared and acted as Defendant's Commissioners. And says that none of the said several Persons, in the Opinion and Belief of the Affirmant, did proceed with Fairness, Candour or Dispatch, in the Service mentioned in their Commissions. But, on the contrary, did shew an Unwillingness and Reluctance to exe-

ecute the Articles of Agreement according to the plain Meaning of the said Articles, as the Affirmant, and, he believes, the rest of the Plaintiffs Commissioners understood them, by using many Arts and Methods to prevent, frustrate, evade and delay a fair Execution of the same.

**James Steel, [Lib. C. Fol. 559. Int. 63. Fol. 563.]*

He also names the same ten Persons who appeared and acted as the Defendant's Commissioners, and says he verily believes the said Commissioners, or any of them, did not conduct themselves with Fairness, Candour or Dispatch in carrying the said Articles into Execution; but, as it appeared to the Affirmant, did shew an Unwillingness and Reluctance to execute the same according to the plain Directions of the same Articles, and also that they the Defendant's Commissioners did use several Arts and Methods, to delay, prevent and evade the Execution of the said Articles, and marking the Lines and Bounds therein mentioned, pursuant to the true Intent and Meaning of the same Articles.

James Logan, [Lib. B. Fol. 76. Int. 63. Fol. 161.]

Names the same ten Persons who appeared and acted as the Defendant's Commissioners at the Meetings where he was present. Says that all the Commissioners on the Part of Maryland appeared to him to have subjected their Conduct, in a very great measure, if not entirely, to the Direction of the said Governor Ogle. And it also appeared to this Affirmant, from the first Time of the Meeting at Newcastle in October, from the general Conduct of the said Governor Ogle, that he had fully purposed and designed to evade the Execution of the said Articles.

Samuel Preston, [Lib. B. Fol. 312. Int. 109. Fol. 444.]

That the Commissioners of the Plaintiffs and Defendant, to the best of his Memory, met 25 or 26 Days about the Execution of the said Agreement of May 1732. The first of which Days was 6th October 1732, and the last 24 November 1733. Says he verily believes there was sufficient Time, during such their Meetings, and before 25 December 1733, to have run and marked out the Circle, and all the Lines directed by the said Agreement to be run, if no Difference, or pretended Difference in Judgment had arisen amongst the Commissioners; which running and marking out the said Circle and Lines, the Affirmant says, was not obstructed or hindered by the Non-Attendance of the Commissioners, on either Side; but, as it appeared to the Affirmant from the general Actings and Behaviour of all the Defendant's Commissioners, was wholly owing to an Unwillingness in all the Defendant's Commissioners to run or mark

out the said Circle and Lines. And further says that he, from time to time, always met, with full Intention and Design to execute the said Agreement, and verily believes, from the general Conduct, Actings and Behaviour of all the rest the Plaintiffs Commissioners that they from time to time, always met with the same Design and Intention.

James Logan, [Lib. B. Fol. 76. Int. 109. Fol. 212.]

Says the like, that there was abundant Time to have run and markt the Circle and all the Lines, if no Difference, or pretended Differences in Judgment had arisen amongst the Commissioners. And says the running out the Circle and Lines was not prevented, by Non-Attendance of the Commissioners on either Side. But was occasioned, as he believes, by the long Adjournments prest and insisted on by the Defendant's Commissioners; owing (in his Opinion) to a formed Resolution on their Parts to evade the Execution of the Agreement, by any means but that of failing in their Meetings according to their Adjournments. He likewise says, that he always had a full Intention to execute the Agreement. And it was apparent to him, and he verily believes, from the Actings and general Behaviour of the rest of the Pensilvania Commissioners, that they met and acted from time to time, with full Intention to execute the said Agreement. And it was apparent to him, and he verily believes from the Actings and general Behaviour of the Maryland Commissioners during all the said Meetings he was at, (which were on nineteen of the said Days,) that they did intend to delay and avoid the Execution of the said Agreement. And the Reasons for his Belief are that they early alledged they could not find a Center, and then asserting and insisting that by a Circle expressly directed to be run at the Distance of 12 English Miles from Newcastle, was intended a Circle of less than two Miles Distance from Newcastle.

Andrew Hamilton, [Lib. C. Fol. 775. Int. 109. Fol. 779.]

That the Commissioners of the Plaintiffs and Defendant, who acted in the Execution of the Agreement May 1732, under the Commissions mentioned in his Answer to the 62d Interrogatory, met on that Business on 26 several Days. The first of which was the sixth October 1732, at Newtown in Maryland, and the last on the 24th November 1733, at Newcastle Town, according to the best of this Deponent's Remembrance. And saith that there was, in his Judgment and Belief, abundantly more than sufficient Time, during such the said Meetings of the said Commissioners, and before the 25th Day of December 1733, to have run and marked out the Circle, and all the Lines directed to be run and markt out, by the said Agreement, if no

Difference or pretended Difference in Judgment, concerning the same, had arisen amongst the said Commissioners. And saith that he hath been credibly informed, by Surveyors and Persons, who are well acquainted with, have been much conversant in, such Business, and this Deponent believes it to be true, that two Months, and a little more, at a proper Season of the Year, would be sufficient for the running and marking out the Circle and Lines aforesaid. And saith that running out of the said Circle and Lines was not prevented by the Non-Attendance of the said Commissioners, on either Side; and that the said Commissioners, on either Side, or a Quorum of them, did not absent themselves, or stay from any of the said Meetings, beyond the Time of Adjournment, above an Hour or two at most. That the Reason assigned, by the Defendant's Commissioners for their not joining with the Plaintiffs Commissioners in running out the said Circle and Lines was, their not agreeing with the Plaintiffs Commissioners in their Opinion or Construction of the Meaning of the said Articles of Agreement of May 1732; but, it was apparent to the Deponent, that the Unwillingness of the Defendant's Commissioners to carry the said Agreement into Execution, was the true Cause or Reason why the said Circle and Lines were not run and markt out by the 25th Day of December 1733. And saith that he is well satisfied that all the Commissioners on the Part of the Plaintiffs, always met and acted, from time to time, with full Intention to execute the said Agreement; and on the contrary, that it was apparent to him, and he verily believes, from the Tenor of the Actings, and general Behaviour of the Commissioners who acted from time to time on the Part of the Defendant in the Execution of the said Commission and Articles of Agreement, never intended to carry the said Agreement into Execution. And that the Reasons for such this Deponent's Belief therein are, as follows, viz. That Samuel Ogle Governor of Maryland, and Patrick Gordon Governor of Pensilvania, having agreed that the Commissioners on each Side should meet at Newtown in Kent County in Maryland, on the 6th of October 1732, in order to carry the said Articles of Agreement into Execution, the said Samuel Ogle, Philemon Lord, Charles Calvert, Michael Howard, Richard Bennett, Matthew Tilghman Ward Esqs; Commissioners on the Part of the Defendant; and the said Patrick Gordon, Isaac Norris, Samuel Preston, this Deponent, James Steel and Robert Charles, Commissioners on the Part of the Plaintiffs, met, accordingly, at Newtown aforesaid on the said 6th of the said October, and agreed to meet again the next Day, being the 7th of the said October, at the same Place, and met accordingly on the said 7th Day of October and the

Articles of Agreement between the Plaintiffs and Defendant's and the Commission to the before-named Commissioners on the Part of the Plaintiffs, and also the Commission to the before-named Commissioners on the Part of the Defendant, being produced and read, the said Mr. Ogle, on the Part of the Defendant, objected to the Validity or Sufficiency of the said Commission from the Plaintiffs to the said Patrick Gordon, Isaac Norris, Samuel Preston, this Deponent, Robert Charles and James Steel, and also to James Logan Esq; directed, for want of proper Persons being joined in the granting of that Commission, and shewed an Indorsement, made upon the Defendant's Part of the said Articles, which Indorsement was signed, as this Deponent remembers, with the Names Letitia Aubrey, William Penn, and others, purporting their Consent and Approbation of the said Articles of Agreement, and that they would do nothing to frustrate or make void the same, or to such Effect; and therefore, urged that the Persons, signing the said Indorsement, ought to have joined in granting the said Commission to the said Commissioners on the Part of the Plaintiffs, and, for not having so done, the said Commission was not sufficient to authorise the Plaintiffs Commissioners to carry the said Articles into Execution; to which it was answered, by the Plaintiffs Commissioners, that, tho' the Defendant might think it proper, for his own Security, or any other Reason, to take such an Indorsement as aforesaid, from the said Letitia Aubrey and William Penn, or any others, not being Parties to the said Articles, it could not affect the said Commission granted by the Plaintiffs; and much being said, by the Defendant's Commissioners, and those on the Part of the Plaintiffs, touching the said Objection, the said Mr. Ogle said at length, he would wave the same, for the present; and then, the Commissioners proceeded to consider what was first to be done towards carrying the said Articles of Agreement into Execution, and the Plaintiffs Commissioners desiring the said Articles themselves might be read, it was said, by the said Mr. Ogle, that there was no need of having recourse to the Articles, for that the Commissions on each Side, were the only Authority by which the Commissioners could act, and they must pursue the Directions of the Commissions, as their Guide; but without further Argument, it was agreed that the Circle, about the Town of Newcastle, was the first Work enjoined to be done by the said Commissions, and thereupon the Defendant's Commissioners proposed to adjourn to the 30th of October; to which it was said, by the said Plaintiffs Commissioners, that this was the most proper Season of the Year for running and marking out Lines in the Woods, and that they had brought their Artists

and Surveyors, to run the Lines directed to be run, by the said Articles; and therefore proposed, that the Commissioners might proceed to run the same accordingly; but it being alledged, by the Defendants' Commissioners, that the publick Business of their Province required their Attendance, and that one of their Artists, on whom they chiefly relyed, was sick, therefore, they insisted they could not attend the Business of running the said Lines before the said 30th of October. Whereupon, the Plaintiffs Commissioners (tho' unwillingly) consented to adjourn to the said 30th of October, to meet at Newcastle aforesaid. Then it was moved by the Plaintiffs Commissioners, that a Minute should be taken of the Meeting of the Commissioners and the Adjournment; which was opposed by the said Mr. Ogle, who said it would be troublesome to the Commissioners. The Plaintiffs Commissioners then proposed the introducing of one Clerk, or more, to take and keep the Minutes of the Commissioners Proceedings, but this was also opposed by the Defendant's Commissioners, as a Thing unnecessary, and would occasion great Trouble and Delay in settling such Minutes. Then, it was said by the Plaintiffs Commissioners, that it would not appear that ever the Commissioners had met, upon the Business mentioned in the said Articles; or that they had adjourned to any Day; That, therefore, they believed it absolutely necessary that Clerks should be introduced, as no Persons were present but the Commissioners themselves; but this was absolutely refused by the Defendant's Commissioners as unnecessary. It was then insisted by the Plaintiffs Commissioners, that a Minute should be taken of the Commissioners Meetings and Adjournments, and signed by a Commissioner on each Side. This was long opposed by the Defendant's Commissioners, but, at last, it was agreed that such a Minute should be made, and Michael Howard, one of the Defendant's Commissioners, and Robert Charles, one of the Plaintiffs Commissioners, were appointed to draw up the same, which they accordingly did. And the Commissioners being met, in the Evening of the 7th of October, at the House of Mr. James Harris, where the said Mr. Ogle lodged, and the Plaintiffs Commissioners having, beforehand, desired Mr. David French and Mr. James Hamilton, then at Newtown aforesaid, to be present in the Room with the said Commissioners, to be Witnesses to the exchanging of the said Minute, the said Mr. Ogle, seeing the said two Persons in the Room, asked them whether they were Commissioners? Whereupon they left the Room, believing, as they said, that it was not agreeable to the said Mr. Ogle, that they should be present. Then two Minutes of the said Meeting and Adjournment, of the same Tenor and Date being produced by the said Mr. Howard

and Mr. Charles, it was desired by the Plaintiffs Commissioners, that the Commissioners on each Side might sign the same, which was refused by the Defendant's Commissioners. Then it was desired by the Plaintiffs Commissioners that the said Mr. Howard and Mr. Charles might each of them sign and exchange the said Minutes. To which the said Mr. Howard made Answer, with some Warmth, that he would not sign, for he did not know but he might be called to England for it. And further saith, that a Quorum of the Commissioners, on each Side, met at Newcastle on the said 30th of October, in pursuance of their Adjournment, at the House of Robert Gordon, and the Articles of Agreement aforesaid being read, it was observed, by Samuel Ogle aforesaid, that the Charter for Pensilvania, and the Deeds of Feoffment for Newcastle being recited in the said Articles, he desired the said Charter and Deeds of Feoffment might be produced; To which it was answered by the Plaintiffs Commissioners, that so much of the said Charter and Deeds of Feoffment as was necessary for carrying the said Articles into Execution, being recited in the said Articles, there was no Need of the said Charter and Deeds themselves, upon which it was asked by the said Samuel Ogle, and the Deponent thinks by the said Michael Howard, whether any of the Plaintiffs Commissioners would give it under their Hand, for Law, that the Recital of one Deed, in another, was good Evidence to prove the Deed recited: To which it was answered by the Plaintiffs Commissioners, to the following Effect, That, in the present Case, they would do so: for, altho' it was generally true, that the Recital of one Deed, in another, was not a Proof of the recited Deed, yet, the present Articles of Agreement, being the joint Act of the contracting Parties, and they having taken upon them the Knowledge of the Charter and Deeds so recited, That same Recital was good Evidence to the said Commissioners, that there were such Charter and Deeds, and that they were truly recited, and that the said Charter and Deeds could not be got nigher than Philadelphia, which would occasion great Delay, that ought to be avoided at that late Season of the Year; but the Defendant's Commissioners insisting on a Sight of the said Charter and Deeds, one of the Plaintiffs Commissioners was dispatched to Philadelphia, who returning the next Day, the said Charter and Deeds were, then produced at a Meeting of the Commissioners, held at the same Place, and the recited Parts of the said Charter and Deeds of Feoffment being compared, with the Charter itself, and exemplified Copies of the said Deeds, they were found to agree. Then Copies of the said Charter and Deeds of Feoffment were demanded by the Defendant's Commissioners; to which it was

objected by the Plaintiffs Commissioners, that the Defendant's Commissioners themselves, having compared the Parts of the Charter and Deeds of Feoffment, recited in the said Articles, with the said Charter and Deeds, and being found to agree, there could be no Use of Copies of the said Charter and Deeds, especially seeing they were very long, but to spend Time, and delay the Business they had met about. And the said Defendant's Commissioners were then put in mind of what the said Samuel Ogle had said at Newtown in Maryland, That the Commissioners had nothing to do with the Articles, the Commission being their Authority and Direction: But this not being satisfactory to the Defendant's Commissioners, it was at last, agreed, that they should have Copies of the Descriptive Parts of the said Charter and Deeds of Feoffment, which they accordingly had, signed by some of the Commissioners for Pennsylvania; It was then offered by the said Samuel Ogle, that he observed there was no Direction in the said Commissions, for finding a Center, in order to run the said Circle about the Town of Newcastle, mentioned in their said Commissions. Whereupon it was alledged by the Plaintiffs Commissioners, That the Commissioners, being impowered and directed by their said Commissions to run the said Circle, They, therefore, had Power to do all that was necessary for the running of the same, and therefore, to fix the said Center. To this it was replied, by the said Samuel Ogle, to the following Effect, That he had consulted both Lawyers and Mathematicians, and they were of Opinion that no Circle could be run, without a Center, and that by their Commissions, they had no Power to fix one. It was then said by the Plaintiffs Commissioners, that in the Map, in the Margin of the said Articles, the Town of Newcastle was laid down, and a Central Point fixed, within the same Town, from which the Circle, described in the said Map, appeared to be drawn which according to the said Articles, ought to be a Direction to the said Commissioners; but, it being answered by the said Samuel Ogle, That the Town of Newcastle, being large, much depended upon fixing the said Center, for if it was placed at the extreme Part of the Town, it might injure the Lord Baltimore, and if fixed in some other Part it might injure the Plaintiffs, It was then urged again, by the Plaintiffs Commissioners, that the central Point laid down in the said Map for the middle of the said Town, was the best Direction the said Commissioners could have, and therefore the said Plaintiffs Commissioners moved that the Surveyors, attending might go and measure the said Town, which was objected to by the Defendant's Commissioners; and then it was proposed by the said Samuel Ogle, that the Commissioners should take a

Walk about and view the said Town; and the Commissioners on both Sides, accordingly then walked to several Parts of the said Town with Surveyors attending them; That upon some of the Plaintiffs Commissioners offering to shew the Defendant's Commissioners the Extent of the said Town, the said Samuel Ogle neglected and disregarded the said Offer; That, upon a Meeting of the Commissioners, on the next Day, the said Samuel Ogle, again said, that he, having consulted Lawyers and Mathematicians, who were of Opinion that they had no Power to fix the said Center, and he having little Skill in those things himself, he ought to have a Regard for their Opinions or to that Effect; and said, besides, That the said Town, he understood, was an oblong, and not round, and the Bounds also uncertain, Therefore he knew not how they could make such a Circle round the same Town; upon this it was offered, by the Plaintiffs Commissioners, to remove that objection, that they should fix the Center at the Court house, in the said Town, which was not one third of the breadth of the same Town from the River Side, and therefore (as the Plaintiffs Commissioners said) it would be much to the Advantage of the Lord Baltimore; To which the said Samuel Ogle answered, That they ought to be careful of the interest of the Plaintiffs, equally with that of the Lord Baltimore, and added, that some of the Plaintiffs Commissioners had said at a former Meeting, that the least Variation from the Articles would make void what they should do by Virtue of their Commissions; To this Allegation it was objected, by the Plaintiffs Commissioners, that no such Words, as the least Variation from the Articles, had been used: but only, that any Variation from the express Words of the Articles, and the Direction of the Commissions, might render void and ineffectual what they should do in pursuance of the same. But there being no express Directions, either in the said Articles or Commissions, for fixing the said Center, and the Circle being directed to be run, therefore, the said Plaintiffs Commissioners conceived that sufficient Power was given to the Commissioners to fix the said Center; and as the said Center, proposed, was for the Advantage of the Defendant, there could be no Apprehensions of his complaining, and the Commissioners on the Part of Pensilvania proposed that they would procure an Assurance from one of their Proprietors of his acquiescing in such Center, so to be fixed; but upon this, the said Mr. Ogle said, we may, thereby, injure some other People who have Freeholds bordering upon the Circle, wherever it should fall: To this it was said by the Plaintiffs Commissioners, That the Commissioners fixing a Center could injure such other Persons no more than if such Center was fixed by the

Plaintiffs and Defendant themselves, who nobody denied, had the Right of doing so; upon which Mr. Ogle said, let us wave the Center, for the present, and talk a little about the Circle. To which, it was answered by the Plaintiffs Commissioners, that it would be to no Purpose to talk about the Circle, till they had agreed upon the Center, since it was admitted that no Circle could be run without a Center; but Mr. Ogle proceeded to ask the Plaintiffs Commissioners what they understood were the Dimensions of the Circle, then proposed to be run? To which the Plaintiffs Commissioners answered, that they understood the Circle, mentioned in the said Articles and their Commission, to be a Circle of 12 Miles Distance from the Town of Newcastle, Whereupon Mr. Ogle said that the Circle which the Commissioners were enjoined to run, was the Circle mentioned in the Deeds of Feoffment of the Town of Newcastle, which Circle, was, as he conceived, a Circle whose Circumference was only 12 Miles, and much more was said by the Defendant's Commissioners to the same Purpose; but the Plaintiffs Commissioners insisting that the Articles of Agreement, being plain, would admit of no Construction, different from the express Words, which Words were (a Circle at the Distance of 12 English Statute Miles from the Town of Newcastle.) Upon this Mr. Ogle asked the Plaintiffs Commissioners, how they conceived a Circle of those Dimensions, could be run in the Woods? And said that for his Part, he thought it impracticable. To which the Plaintiffs Commissioners answered, that, if that was the Opinion of the Defendant's Commissioners, then they the Plaintiffs Commissioners understood them very well, that the said Articles were not to be carried into Execution at all; and much Time being spent in Debates upon this Subject, it was at last proposed by Governor Ogle, That as the Commissioners on each Side, differed so much in Opinion and the Lord Baltimore being, soon expected in his Province of Maryland, that they should adjourn, in order to have his Lordship's Directions for the fixing of a Center; but this was opposed by the Commissioners on the Part of Pensilvania, who said that the Season of the Year for running Lines in the Woods was far advanced, that they had brought their Artists with them, expecting to proceed upon the Work, as they had done at their first Meeting at Newtown, and that it was well known to every body, that after the 10th or 20th of December, the Weather was too severe, for any Persons to go and continue running Lines in the Woods, for any long Time as the Persons who were to do this Work would be obliged to do; and therefore an Adjournment would be very inconvenient; but the Commissioners of Maryland insisted, that they knew no more likely Way to forward the Work

then before them, than first to receive the Lord Baltimore's Directions for the finding a Center, which they conceived they had no Power to do themselves; upon this, the Plaintiffs Commissioners took some small Time to consider of the proposed Adjournment, and in few Hours, the Commissioners of each Side met again, and it was said by the Plaintiffs Commissioners that they could not agree to any Adjournment, till the Defendant's Commissioners had named the Day, and if it was a short Adjournment, probably that the Plaintiffs Commissioners would agree to it; and much being said upon this Subject, the Commissioners of Maryland, at last mentioned the first of February, which the Plaintiffs Commissioners desired time to consider of; and then, they observed to the Defendant's Commissioners, that as there had been no Minutes taken of the Proceedings that had passed amongst them, and that tho' the Business which they were upon, was of a publick Nature, yet Clerks had been refused to be introduced, and no Persons admitted to hear, or be privy to, any of their Debates, they again insisted upon having Clerks introduced, and Minutes taken of their Proceedings, which they conceived absolutely necessary, that it might appear they had met upon the Business which they were impowered to transact by virtue of their Commissions; but this was, again, absolutely refused by the Defendant's Commissioners, as unnecessary, saying that great Confusion and Trouble would arise by the Clerks differing in their manner of taking such Minutes, and Mr. Ogle likewise then said, that they would own before any Body, they had met on this Business; to which the Plaintiffs Commissioners replied, that there would be no Misunderstanding, or Differences of that kind, amongst the Clerks, as they would be present with, and under the Directions of the Commissioners; but not being able to obtain the Consent of the Defendant's Commissioners to have Clerks, or any other Person present at their Meetings, they took Time to consider of the Adjournment, till next Day; and, in the mean time, having observed amongst themselves, with great Concern, the Arts and Methods used by the Defendant's Commissioners to evade and delay the Execution of the said Articles, and their affecting so much Secrecy, at their Meetings, so as to admit no Persons to be present besides the Commissioners, it was resolved, amongst the Plaintiffs Commissioners, that a Paper should be drawn up (from the Minutes kept by the Plaintiffs Commissioners) of the several Transactions of the Commissioners from their first Meeting, to be read at the next Meeting of the Commissioners on both sides, and the same was drawn up, accordingly, and read to the Defendant's Commissioners the next Day; and at the same Time it was desired that

they would make their Objections, if they had any against the Truth of it; To which Mr. Ogle said, that the Plaintiffs Commissioners might keep what Minutes they pleased, but if he had had the drawing up of that Paper, he could have set the Arguments of the said Defendant's Commissioners in a fairer Light; and then, one of the Defendant's Commissioners produced a Paper, which was said to be some Minutes kept by them, and read the same, purporting that the Commissioners on both sides had met at Newcastle, in order to execute the Articles, or run the Circle, but, Difficultys arising, they had agreed to adjourn; but the Plaintiffs Commissioners objected to this as being very unsatisfactory, and far from containing what had passed between the Commissioners, and the Reasons of their Adjournment; Upon which Mr. Ogle pulled out a Paper, and after reading the same, said, Gentlemen, What do you think of that? Which Paper was to the Effect following, viz. That the Plaintiffs Commissioners, or some of them, had declared it for Law, that the Recital of the Charter for Pensylvania and the Deeds of Feoffment, in the Articles, tho' false, yet were conclusive to the Parties? To which it was answered by the Plaintiffs Commissioners, that no such Words had been used by them, or any of them; for that they could not suppose that the Parties to the said Articles, (who were so largely interested and concerned in the Consequence) would make any false Recitals therein, which must be so much to the Prejudice of one, or the other, of them; and then appealed to the others of the Maryland Commissioners, whether the Words used by the Plaintiffs Commissioners were not to the following purport, viz. That the Recitals of one Deed, in another, is not generally, any Evidence of the Deeds recited, but that, in the present Case, as the Articles of Agreement were the Act of both contracting Parties, we must presume that there were such Deeds, and that they were truly recited, and that the Commissioners are to be concluded by them; which the other Maryland Commissioners seeming to allow, the said Mr. Ogle put up the said Paper into his Pocket again, without saying any more; and then, in Confidence of Lord Baltimore's Honour, and in hopes that he would give Directions to his Commissioners to proceed in the Execution of the said Articles, the Plaintiffs Commissioners agreed to the Adjournment to the 1st of February following, at Newcastle Town aforesaid. That a Quorum of the Commissioners met at Newcastle, on the 1st of February 1732, and some of the Defendant's Commissioners being arrived in the said Town the Day before, the Plaintiffs Commissioners having set out early in the morning, arrived late at Night; that the said Samuel Ogle acquainted the Plaintiffs Commissioners with the great

care the Defendant's Commissioners had taken to come early, notwithstanding the great Distance, and the Rigour of the Season; but you, Gentlemen, (speaking to the Plaintiffs Commissioners) seem to be fatigued, with coming 40 Miles only; and therefore let us adjourn to To-morrow Morning; to which it was answered, by the Plaintiffs Commissioners, that, unless we meet now, with a better Disposition to do Business than formerly, a small Part of an Afternoon will be no great Loss. That when the Commissioners met the next Day, the said Samuel Ogle acquainted the Plaintiffs Commissioners, that they were now met to proceed upon Business, and the Thing that was before them was the Circle, about the Town of Newcastle, and that he would be glad to know what the Plaintiffs Commissioners thought of the Dimensions of that Circle, or Words to that Effect? To which it was answered by the Plaintiffs Commissioners, that the Defendant's Commissioners could not forget that the Reason of their former long Adjournment was that they the Maryland Commissioners according to their own Request, might have an Opportunity, upon their Lord's Arrival, to receive Directions for fixing a Center of the said Circle, and carrying the said Articles into Execution. To which the said Samuel Ogle replied, That Lord Baltimore had delegated his Power to his Commissioners to carry the said Articles into Execution, and therefore, he would not interfere; and thereupon, ensued long Debates, concerning the Dimensions of the Circle; the Defendant's Commissioners insisting that the Circle, intended to be run, was the Circle mentioned in the Deed of Feoffment for the Town of Newcastle, whose Diameter was something less than four Miles; and the Plaintiffs Commissioners insisted that the Circle to be run, was the Circle mentioned in the Articles of Agreement and the Commissions, of the said Commissioners, which was a Circle to be run at the Distance of 12 English Statute Miles from the Town of Newcastle aforesaid. That after many Debates upon that Subject, it was proposed by the Defendant's Commissioners, that the Commissioners on both sides, should take the Opinion of Mathematicians, concerning the Dimensions of the said Circle; to which it was said, by the Plaintiffs Commissioners, that the Words of the Articles and Commissions being express and plain, there could be no Use for the Judgment of Mathematicians upon the Subject; and as the said Samuel Ogle had formerly objected against any Variation, when the Subject of the Center was debated, even tho' there were no express Directions in that Case, it would be much more dangerous to depart from a plain and positive Description and Direction in the present Case; but the Defendant's Commissioners insisting, still, upon taking the Opinions

of Mathematicians, upon the Dimensions of the Circle, they were desired, by the Plaintiffs Commissioners to reduce their Question to writing, which they long refused to do; but at last stated the Question, concerning the Dimensions of the Circle, upon the Words of the Deed of Feoffment; and it being requested that some of the Defendant's Commissioners should sign the said Question, they repeatedly refused so to do; upon this, some of the Plaintiffs Commissioners considering that, as no Clerks had been introduced, nor any Persons admitted to be present at the said Debates and remembering that none of the Commissioners at Newtown would sign the Minute of Adjournment they therefore, did believe that all this was done with intent that, there should be no Evidence of what had passed among the Commissioners concerning the Execution of the said Articles; and the Plaintiffs Commissioners considering the Impropriety of their being made use of as Witnesses against their Fellow Commissioners for the Defendant, they, therefore, insisted that, at the Time they gave this Answer, to the Question stated by the Defendant's Commissioners, the Mathematicians should be present, to support their own opinions, if needful, which was long opposed by the Defendant's Commissioners, but the Plaintiffs Commissioners insisting on it, that no Answer should be given to the said Question, unless they might have the Mathematicians present, it was, at length agreed to, by the Defendant's Commissioners and it being late at Night, the Commissioners adjourned, some of them saying to ten, others eleven of the Clock the next Day. That the Commissioners of the Plaintiffs meeting afterwards, that Night, agreed to reduce to writing what they had to say in Answer to the said Question, a rough Draft was prepared, by one of the Clock next Morning. That the same Morning, being cold, and the Person employ'd to draw the said Answer being indisposed, it required some considerable Time for the Plaintiffs Commissioners to examine and approve of it, which being done, with all the Expedition they could, two Persons were employed to copy it, whilst the Deponent dictated to them, and this with a Design to read and deliver one Copy to the Defendant's Commissioners at the Meeting of the Commissioners in the Presence of the Mathematicians, and the other to be kept and Witnessed by the Mathematicians proposed to be present. That whilst the said Answer was copying, three of the Plaintiffs Commissioners were sent, to meet the Defendant's Commissioners in the Court-House, the usual place of Meeting; but in transcribing the rough Draft of the same Answer, there was occasion for a Sight of the said Articles of Agreement, and one John Georges was sent, for

them, to James Steel, one of the said three Commissioners who had the Custody of them; who left the Commissioners that had met, and brought the said Articles to the Commissioners that were preparing the said Copies; and the Drafts of the said Answer being near finished, the said James Steel staid until they should be finished, that the other two Commissioners might go, with him, on his Return; and just when the said Copies were finished and examined, and the two Commissioners and Mathematicians were ready to go to meet the Defendant's Commissioners, Isaac Norris and Samuel Preston came into the Room to this Deponent, and said, that the said Samuel Ogle had complain'd of his Waiting so long for a Quorum of the Plaintiffs Commissioners beyond the Hour of Adjournment, and had left the Place of Meeting; which occasioned great Concern in all the Plaintiffs Commissioners, and some of their Number were directed to wait on Governor Ogle, and the other Commissioners of the Defendant's and acquaint them, that the Non-Attendance of the Plaintiffs said Commissioners at the precise Hour, did not proceed from any want of respect to the Defendant's Commissioners, or from any unwillingness to attend at the Hour appointed, but merely from an Accident, and to request the said Defendant's Commissioners to resort to the Court-House their usual Place of Meeting, and the Plaintiffs Commissioners would gladly wait on them. That the Person, who was directed to wait on the said Commissioners after Departure, returned and said that he had acquainted the said Governor Ogle accordingly, and that he replied he must consider of it. That this Deponent has heard and believes, that all the Commissioners on both sides (except this Deponent who was indisposed) dined together on that Day. That the Defendant's Commissioners after Dinner repaired to the House in the said Town where Governor Ogle Lodged. That the Plaintiffs Commissioners meeting together, agreed to wait upon the Defendant's Commissioners at Mr. Ogle's Lodgings, to excuse their Non-Attendance in the Forenoon, at the Hour appointed, and to request them to meet the Plaintiffs Commissioners at the Court-House that Afternoon, and four of the Plaintiffs Commissioners went accordingly, and the Deponent followed, as soon as he could get into his Chaise; That, upon the Deponent's coming to the said Mr. Ogle's Lodgings, where the said Mr. Ogle, Mr. Charles Calvert, and Mr. Edmund Jennings, three of the Defendant's Commissioners, were in company with Isaac Norris, Samuel Preston, James Steel, and Robert Charles, four of the Plaintiffs Commissioners, and the said John Georges, the said Mr. Edmund Jennings, upon the Deponent's coming in, left the Room, and the said Mr. Ogle said

he was very sorry to see this Deponent so lame, and asked him to sit down; that the Deponent expressed his Concern that his Indisposition had given any Disappointment to the Meeting of the Commissioners that Morning; to which the said Mr. Ogle replied, That he had been very unwilling to give this Deponent any uneasiness, and had offered to come to this Deponent's Lodging, which the other of the Plaintiffs Commissioners had declined. That then, the Deponent said, that the considering and framing an Answer to the Question put by the Defendant's Commissioners the Night before, with this Deponent's Indisposition, and the Lameness of one of the Mathematicians, had prevented the Plaintiffs Commissioners Attendance at the Time appointed, but that they had provided an Answer, such as it was, to their Question, which he might see, if he would. and thereupon, this Deponent received from the Hand of the said John Georges, one fair Copy of the said Answer, signed by five of the Plaintiffs Commissioners, and delivered the same to the said Mr. Ogle, who looking upon the Beginning and End of it, offered to return it to the Deponent, who said that that was designed for him, and the Plaintiffs Commissioners had another of the same. Whereupon, the said Mr. Ogle laid the same down upon a Chair, by him. That then the Deponent proceeded to acquaint the said Mr. Ogle, and Mr. Calvert (the said Jennings having left the Room, as this Deponent verily believes, that there might not be a Quorum of the Defendant's Commissioners present with the Plaintiffs Commissioners) with the Sentiments and Desires of the Pensilvania Commissioners, and that they believed themselves hardly used in having an Attempt made to break off the Meetings of the Commissioners, because the Plaintiffs Commissioners had delayed meeting an Hour, or an Hour and an half, beyond the Time adjourned to. That the Plaintiffs Commissioners had waited as long for the Defendant's Commissioners, the Day before, who appeared to have nothing to do, but to walk about in the Room, and that, without the least complaining, and therefore they were in hopes that that might excuse their Absence that Morning and hoped that the Defendant's Commissioners would now meet them, to proceed upon the Business before them; to which the said Mr. Ogle replied, That, if they had got any Advantage to the Lord Baltimore by the Failure of the Plaintiffs Commissioners, he could not answer to give it up. That the Lord Baltimore might do what he would, but he questioned, whether he the said Samuel Ogle had it in his Power to forego that Advantage, or Words to that Effect. Upon which, the Deponent said, that he was well assured that the same was no such Failure in the Pensilvania Commissioners, by which any Forfeiture could

arise to the Lord Baltimore, and that in the Execution of Commissions, wherein more Form and Strictness were required than in this, the Failure of an Hour or two, if there was an offer to meet within the Day, had not been judged such a Fault as to determine the Commission; and that he this Deponent was sure the Defendant's Commissioners would not rely on the said Failure, and again jointly with the other of the Plaintiffs Commissioners invited the said Governor Ogle and the said Mr. Calvert to meet the Plaintiffs Commissioners with the rest of the Defendant's Commissioners, at the Court-House aforesaid, when the Plaintiffs Commissioners would be ready to wait for them. But Mr. Ogle said there is not a Quorum of our Commissioners here; that he was no Lawyer, and was not used to speak upon such Points, and continued in his former Opinion, that if his Lordship had gained any Advantage by the Plaintiffs Commissioners Default, he could not answer it to him to give it up, or Words to that Effect; upon this Deponent said, that, considering the former Conduct of the Defendant's Commissioners, it was no surprize to him to find them so ready to break off the Execution of the Articles, upon any pretence, how small soever, and thereupon left the Room with the other Pensilvania Commissioners, who going together to their own Lodgings, agreed that Notice should be given to the Maryland Commissioners, to meet them at the usual Place at six o'Clock that Evening, which this Deponent had heard and verily believes were served upon a Quorum of the Defendant's Commissioners, but tho' the Plaintiffs Commissioners did accordingly attend, yet, none of the Defendants' Commissioners met them; and thereupon the Plaintiffs Commissioners caused other Notices to be served, upon a Quorum of the Defendant's Commissioners (as this Deponent has heard and believes) to meet the Plaintiffs Commissioners on the Monday Morning following, and the Plaintiffs Commissioners accordingly attended, on the said Monday Morning, but none of the said Defendant's Commissioners met them, they being set out from Newcastle aforesaid the Day before, on their Journey back to Maryland. And the Deponent further saith that, soon after this, the said Governor Gordon laid before the Pensilvania Commissioners, a Letter which he had received from the Lord Baltimore, complaining of the Conduct of the Pensilvania Commissioners, and therein (reserving to himself any Advantage he might have gained by this Failure) gave them Notice to meet his Commissioners at Joppa in Maryland, on the 7th of May then next following; and thereupon the Pensilvania Commissioners upon perusing the said Letter, being of Opinion that the Lord Baltimore by the said Articles or Agreement had no power to give such Notice,

immediately dispatched a Messenger, with a Notice to his Commissioners, dated 28th March 1733, to meet them at the Town of Newcastle on 16th April then next, in Order to proceed upon the Execution of the said Articles, which Notice was served upon 5 or 6 of the Defendant's Commissioners, as this Deponent verily believes. And the Deponent saith that, upon the Return of the said Messenger the Pensilvania Commissioners received Notice from the Maryland Commissioners, to meet them at Joppa aforesaid on the said 7th of May; that a Quorum of the Pensilvania Commissioners attended at Newcastle, on the said 16th Day of April, in pursuance of their Notice given to the Defendant's Commissioners, but the Defendant's Commissioners did not meet them. And the Deponent further saith that, afterwards, five of the Plaintiffs Commissioners went, and met a Quorum of the Defendant's Commissioners at Joppa aforesaid, on the said 7th of May; that the Commissioners being met and Mr. Ogle taking Notice there was a Gentleman in the Room besides the Commissioners, Mr. Jennings said, perhaps he is a Commissioner; to which the Deponent made Answer to the following Effect, That the said Person was not a Commissioner, but a Gentleman of Worth, who had accompanied the Plaintiffs Commissioners down thither; That the Business they were met about was of a publick Nature, and that, as the Conduct of the Plaintiffs Commissioners at Newcastle, had been much misrepresented, and they had been refused Clerks, or any Person to be present at their Meetings, they insisted that that Gentleman should continue in the Room; to which Governor Olge replied, that he had said formerly, that Clerks were unnecessary, and was of the same Opinion still, but had not refused to admit other Persons to be present at their Meetings: Upon which, he was put in mind by the Pensilvania Commissioners of his Conduct at Newtown, where he declined exchanging the Minutes of Adjournment, till David French and James Hamilton, who were introduced as Witnesses, had left the Room, as herein before set forth and then the said Mr. Ogle said, if this Gentleman stays in the Room, we desire we may have one too: to which it was answered by the Pensilvania Commissioners, With all our hearts, twenty if you please; Whereupon one John Beale, a Clerk of some Court in Maryland was called in by the Defendant's Commissioners. And then the said Mr. Ogle beginning to speak about the Opinion of the Mathematicians, concerning the Circle to be run about the Town of Newcastle, the Commissioners of Pensilvania recounted the former Conduct of the Defendant's Commissioners and how they had disregarded their last Notice to meet at Newcastle the said 16th of April, and the several Notices given them

in Newcastle, in the Month of February to meet at the Court-House in the said Town, and especially when Mr. Jennings, being in Company with two of the Maryland Commissioners and four of the Pensilvania Commissioners, left the Room with intent that there might not be a Quorum of the Maryland Commissioners present, with the Pensilvania Commissioners; upon which the said Mr. Jennings then interrupted the Pensilvania Commissioners, and said he own'd he had done so, and that in the same Circumstance, he would do so again; and then it was said by the Pensilvania Commissioners, that Misunderstanding had formerly arisen about what passed at their several Meetings, they therefore now insisted that the Defendant's Commissioners should reduce into Writing any Questions, Proposals or Arguments they had to offer, and to sign them, and that they the said Pensilvania Commissioners would do the like, and thereupon several Papers were exchanged between the Plaintiffs and Defendant's Commissioners, concerning the Dimensions of the Circle directed to be run about the Town of Newcastle pursuant to the said Articles of Agreement, and after much Time spent this way, it was proposed by the Maryland Commissioners, that they should immediately adjourn to Cape Hinlopen, to which the Pensilvania Commissioners agreed, saying they would set out the next Morning, and desired that a Minute might be made to that purpose; but then the said Mr. Ogle said, that by immediately he did not mean to go so soon, but that they would be ready to meet the Plaintiffs Commissioners there in a Fortnight; To this the Plaintiffs Commissioners said, they could not but think themselves very hardly used in being brought upwards of 100 Miles, into a Place where they could not be provided with Necessaries for their support, merely to be told that they must meet a Fortnight after, at another Place, which was above 100 Miles further; nor did they think the said Usage better in the Defendant's Commissioners proposing an immediate Adjournment to Cape Hinlopen, and then declining to stand to it, which the Plaintiffs Commissioners believed was proposed only in Expectation that the Plaintiffs Commissioners would refuse to agree to it. And the Deponent saith that he does likewise believe, that the Defendant's Commissioners so appointing the said Meeting at Joppa, was only in hopes that the Plaintiffs Commissioners would not meet them there, and thereby the Defendant would gain some Advantage; and after many Debates concerning the further Adjournment, and the Defendant's Commissioners alledging that they were obliged to wait upon the Lord Baltimore, who was on his Way to make a Visit to the Governor of New York, then at Burlington in New Jersey, and therefore

they must adjourn, a Minute was drawn up, assigning for Cause of their Adjournment that the Defendant's Commissioners were obliged to wait upon the Lord Baltimore; but it was objected to by the Defendant's Commissioners, as unnecessary to have the Reason of their Adjournment assigned in the Minute, yet, it was insisted upon by the Plaintiffs Commissioners, that as that was assigned by the Defendant's Commissioners as the true reason of their desiring an Adjournment, it ought to be inserted in the Minute. And the only Reason the Plaintiffs Commissioners could find why the Defendant's Commissioners should oppose it, was, lest it should appear they had sent for the Plaintiffs Commissioners only to tell them that they met, to adjourn from Joppa, to attend their Lord; That under this Difference, the Commissioners on each side continued together till Eleven of the Clock at Night, and the Plaintiffs Commissioners observing that the Defendant's Commissioners must wait upon their Lord Proprietor, they, at length, agreed to leave the Reason aforesaid out of the said Minute, and then the Minute was prepared for an Adjournment to Philadelphia, and was signed the next Morning; That Quorums of the Commissioners, on each side, did afterwards meet at Philadelphia aforesaid on the 26th Day of May next following, when it was represented to the Defendant's Commissioners, that the Lord Baltimore being about to depart very soon after for England, and some of the Defendant's Commissioners intending to accompany his Lordship to Virginia, from whence he was to take his Departure, and that the said Mr. Ogle, on resuming the Government of Maryland was obliged to renew his Security, which was to be executed before the Governor of Virginia, which required the said Mr. Ogle's personal Attendance, upon those Considerations, joined to that of the Unfitness of the Season for running Lines in the Woods, an Adjournment to the 3d of September following, at Newcastle Town aforesaid, was agreed to and drawn up, and signed by the Commissioners on both sides; That Quorums of the Plaintiffs and Defendant's Commissioners met at Newcastle Town, on the said 3d Day of September, and continued together three Days, during which Time several Papers were exchanged between them, concerning the Dimensions of the said Circle, the Plaintiffs Commissioners insisting that the said Circle should be drawn at the Distance of 12 Miles from the Town of Newcastle, and the Defendant's Commissioners persisting in their former declared Opinion, that the said Circle should only be a Circle of 12 Miles Circumference; They therefore proposed to the Plaintiffs Commissioners to adjourn for further Consideration, until the 14th of November then next, and a Minute thereof was accordingly drawn up and signed; On which Day a Quorum

of the Commissioners, on each side, met at Newcastle Town aforesaid, and continued together until the 24th Day of the same Month, during which time several Papers were exchanged between them, principally concerning the Dimensions of the said Circle; and the Commissioners on each side persisting in their former Opinions concerning the same, it was said by the Defendant's Commissioners, that, under this Difference of Opinion or Judgment, they must either continue at Newcastle aforesaid until the 25th of December then next, or must depart from thence without further Adjournment, and a Minute was accordingly drawn up, declaring the Sentiments of the Commissioners on each side, and the Reasons of their Departure without further Adjournment; Therefore this Deponent saith, that the groundless Objections, which were raised by the Defendant's Commissioners against the Validity of the Plaintiffs Commission to their Commissioners, their affecting Privacy, and refusing to admit Clerks, or to sign and exchange Minutes of the Proceedings of the Commissioners, their long Adjournment, without any good Reasons for the same; their endeavouring to take the Advantage of a small Failure in the Plaintiffs Commissioners for Non-attendance; their disregarding the repeated Notices and Requests, made to them by the Plaintiffs Commissioners at Newcastle on the 3d of February, and the Notices given to them to meet upon the 16th of April; together with their setting up, and insisting upon, a Circle of Dimensions, different from that which was expressly directed by the said Articles of Agreement, and the several other Matters herein before declared by this Deponent, are the apparent Causes and the true Reasons, why the Deponent believes the Defendant's Commissioners never intended to carry the said Articles of Agreement into Execution.

21ST BRANCH, That the Circle, and the Distance of it, were well known at the Time of the Agreement, That Lord Baltimore's own Map had many particular Marks and Lines relating to that very Circle; That he had above 8 Years before that Time the largest Draft of the Peninsula, that had ever been seen, with several East and West Lines markt for Division thereon; That the Plaintiffs had never been in America, to gain any Knowledge on their Parts; and also to prove an old Map of the Town of Newcastle.

Ferdinando John Paris, [Lib. A. fol. 195. Int. 18. fol. 268.]

Says that the Circle, round Newcastle, and the Distance that such Circle was to be from its Centre, were, at sundry of the

Meetings, had in this Deponent's Presence, between all (or some) of the Plaintiffs and the Defendant, in order to the said Agreement, spoken of and mentioned, many times; and were by every one of them, who spoke of the same, constantly spoke of, and treated as a Circle to be drawn at the Distance of 12 Miles from the Centre, and at no other Distance whatever; but that a Question did afterwards arise, whether such 12 Miles should be Geographical Miles, or English statute Miles; and the Deponent hath good reason to remember, that neither the Defendant, nor the Plaintiffs, did, at any one of the Meetings between them in order to the said Agreement, which the Deponent was present at (and he believes he was present at all such Meetings) ever mention that the said Circle should be at four Miles, or at two Miles Distance from Newcastle, or anything of that sort, but, on the contrary, the Defendant the Lord Baltimore, himself, spoke of the said Circle at such Meetings, as at the Distance of 12 Miles from its Center; and more particularly, upon the Occasion of his insisting that the Head or North Bounds of his Province of Maryland, should go up so far North, as to be within 15 Miles South of the Latitude of Philadelphia, the Deponent well remembers that the Plaintiffs (or such of them as were then present) and the Defendant appeared to be all at a loss, to judge, upon their Maps (then produced on each side) whereabouts such fifteen Miles would fall upon the Map, there not being any Scale of Miles either upon the said Lord Baltimore's, or upon the Plaintiffs written Map; On which Occasion, the Lord Baltimore, with a Pair of Compasses, measured one of the said written Maps, and took his Scale or Measure (as for 12 Miles) from the Distance which was there laid down between Newcastle and the Circle, or Part of a Circle there drawn; and from such Measure, set off a larger Distance, as for 15 Miles, South of Philadelphia, at which Distance, he had insisted, his Head or Northern Boundary should be, and markt one of the said written Maps accordingly; and which Uncertainty as to the exact Place, where 15 Miles South of Philadelphia would fall, or of the Name of any such Place, occasioned the Deponent, on preparing the 7th Article, in the Draft of the said Articles of Agreement, to express the same to some such Effect as is therein mentioned. And the Deponent is the rather certain, that during the said several Meetings in order to the said Treaty, which the Deponent was present at, the said Circle was never once mentioned, by any Person, as a Circle at two Miles Distance from Newcastle only, for that, along time after the Sealing and Delivery of the said Articles of Agreement, when the Deponent first heard that the said Articles of Agreement had not been carried into Execution in America, but,

that a Contest had arose there between the Commissioners on each side, whether the Circle should be two Miles distant, or 12 Miles distant, from Newcastle, this Deponent was under a real Surprise thereat, and had recourse to the Draft of the said Articles; and to one engrost Part of the same, then in this Deponent's Custody, fearing that some Mistake of the Clerk, in copying or engrossing, or by expressing the Distance in Figures only, and not in Words at length, must have given Room for making such a Question as that; And this Deponent, finding no Mistake either in the Draft or in that engrost Part of the Articles which was in this Deponent's Custody, could not (in a great length of time after he first heard of such contest between the Commissioners) conceive upon what Foundation such a Question could be raised.

The same. [Int. 19. fol. 276.]

Says that the Western Part of the Circle, as it was drawn out upon the Lord Baltimore's and upon the Plaintiffs written Maps, which were so produced as aforesaid, did extend Westwards, very near to, or even to touch Elk River, and so the same was graven and printed off, but whether a Circle to be drawn only at 12 Statute Miles Distance from Newcastle, will really extend so far Westwards, doth not know; And saith that, from all this Deponent knows, or hath seen, he doth believe that the Defendant had the fullest Information relating to the said Circle, and the Dimensions thereof; for that the Deponent hath, before, and since, the entring into the said Agreement between the Parties to this Cause, seen many Drafts and Plans, where the Circle about Newcastle was laid down, but as to the Extent and Distance of such Circle from Newcastle, there were either on the Back-side of the written Map so produced and markt by the Lord Baltimore as aforesaid, or on some Paper, which was then stitched or pinned, or some how affixt to it, such and so many particular Lines and Marks, and Notes and Descriptions, relating to the said Circle, as the Deponent, never before, or since, saw, in any other Map or Paper whatever, either belonging to the Plaintiffs, or any other Person; from whence, as well as from the Expressions in the Draft of the said Articles of Agreement, and from the said Mr. Senex's written Opinion upon the same, the Deponent apprehends and believes, none of the Parties to this Cause, and much less the Defendant, were at all ignorant of, or under any Uncertainty, then about the Dimensions of the said Circle, but were well informed of the same, that it was to be at twelve Miles Distance from Newcastle, besides which, in the Draft of the said Articles of Agreement there was recited the Charter from the Crown,

of Pensilvania, and the two Feoffments from the Duke of York, for Newcastle, and the South Tract, in the very descriptive Words, as this Deponent believes (as to the Limits of the Territory granted) of the said Charter and Feoffments, or very nearly so.

The Defendant at fol 362. denies he ever meant or intended that the Cirele, should be a Circle, whose Semi-Diameter should be 12 Miles, and insists, at fol. 360. that if the Articles should be decreed to be carried into Execution, yet that the Circle was thereby agreed, and ought to be a Circle, whose Semi-Diameter is two Miles.

Now we'll first consider the Grants by themselves, before we come to the Agreement, and what are they? The Charter of Pensilvania begins, clearly and without any Possiblity of Doubt, by a Circle to be drawn Northerly and Westerly 12 Miles distant Northwards from Newcastle Town; Again, The Duke of York's Feoffment of the lowest of the two SouthTracts begins, as clearly and expressly, at the Distance of 12 Miles Southwards from Newcastle Town. And what does the Feoffment of Newcastle, which was the middle Tract between those two Grants? Why, it grants the Town of Newcastle, and all the Lands within the Compass or Circle of 12 Miles about the Town. Can any Man in his Senses, seriously imagine that this contains the least Matter of Doubt? He got two Persons to sign a Paper, as their pretended Opinion, that the Circle in the Feoffment of Newcastle (not the Circle mentioned in the Agreement) should be only two Miles distant, but though they signed it, and are examined as Witnesses to swear that they signed it, they beg our Pardons, they won't say a single Word that they even thought that to be a true Opinion as to the Extent of that Cirele in the Feoffment.

But the Defendant would chuse rather to debate upon the Feoffment, which he imagines is less clear than the others. Now we are not obliged to that, but if we were, it would not at all help him. For that particular Feoffment itself is exceedingly clear in our favour, as already observed; besides which, that very Feoffment, in two several Places calls it expressly 12 Miles of Land; which absolutely destroys his Construction of the Cirele, because a Circle, whose Circumferene or Periphery is but 12 Miles, does not contain 12 Miles of Land, no not even if that Circle was compleat; whereas ours is not Half of a Circle of Land, as Newcastle lies on the great River side, and does not contain any thing near Half 12 Miles of Land.

Another thing which shews the distance of the Newcastle Circle is, Sir John Werden's Request in behalf of the Duke of York in 1680, at first, that Mr. Penn should be bounded 20 or 30 Miles North of Newcastle, which at last was brought to be but 12 Miles North, and so described in the Patent of Pensilvania.

But when we come to the Agreement, surely we are beyond all Imagination of Doubt, both that it was agreed, and was intended to be, 12 Miles distant from Newcastle.

For 1. The Draft of the Agreement, 9 Months under Consideration, says so expressly.

2. Mr. Senex's written Opinion on that Agreement says so expressly. And that the Town of Newcastle was to be taken as a Centre.

3. My Lord's own Proposals, under his own Hands, describes it, in two several Places, in the very first Article of his Proposals, a Circle of 12 Miles Distance from Newcastle, and in the third Article the Circle of 12 Miles from Newcastle.

4. His Articles, so deliberately settled, and afterwards executed under his Hand and Seal, direct it to be drawn at the Distance of 12 Miles from the Town of Newcastle, most expressly.

And I would beg of my Lord, or his most ingenious Council, to explain my Lord's own Proposal any otherwise. Nor is this all.

5. Paris swears that my Lord, during the Treaty, not only spoke of it as at 12 Miles Distance, but took off the Measure, as for 12 Miles, from the Circle in the Map, in order to measure off and satisfy his Curiosity where the 15 Miles South of Philadelphia would fall upon the Map.

6. The Affair of the Circle was most particularly under Consideration during the Treaty, and was not a Matter that past *sub silentio*, for, with regard to the Miles at which that Circle should be distant from Newcastle, you'll please to observe there were only two Distances of Miles mentioned in the whole Articles: the one was the 12 Miles Distance for this Circle, the other was the 15 Miles South of Philadelphia; and it is in that Sheet of the Draft where both these Distances are mentioned, that Mr. Sharpe's general Remark of his own Hand-writing is placed, that the Miles, throughout, should be express English Statute Miles. So that the Circle was thereby the more particularly under Contemplation, and the Distance which it was to be at from Newcastle, whether 12 Geographical Minutes, or 12 English Statute Miles.

Yet, this Defendant is so extremely hardy as to say, he never meant or intended 12 Miles distant, but that the Circle agreed upon, is only two Miles distant.

The most favourable thing that can be said, and that's extremely bad, is, that Mr. Hamllton, who drew this Answer for my Lord, had not sufficient Time or Instructions, and that my Lord swore to what he drew, and never read it over; for otherwise, some of his Perjuries are so gross (and so foolish too) that my Lord could not possibly have put in such an Answer, he many times flatly contradicting his own self in Facts, besides the many other Places in which he is contradicted by his own Witnesses.

James Logan, aged 66. [Lib. B. fol. 76. Int. 36. fol. 218.]

That subsequent to an Agreement made between the Lord Baltimore and Hannah Penn, in February 1723, to wit, in May 1724, there was a Meeting appointed and held between the said Lord Baltimore as Proprietor of Maryland, and the Proprietors of Pensilvania, at the George and Vulture Tavern in London, at which were present on the Lord Baltimore's side, the said Lord Baltimore, John Hide of London Merchant, and his Son, and on the part of the Proprietors of Pensilvania, two of the Plaintiffs with Springett Penn, who claimed a Right in the same Province, and Joshua Gee and Henry Goldney, two of the aforesaid Trustees of the said Province, Simon Clement, and the Affirmant; and upon opening the Conference, the Lord Baltimore produced, and kept lying on the Table before him, a Draft on a Sheet of Paper, which appeared to the Affirmant, who eyed it very carefully, to be the fairest and largest Manuscript Draft of Chesopeak Bay, and also Delaware, with the Peninsula lying between them, and the adjacent Parts, that ever the Affirmant had seen; on which Draft there were drawn, at least two East and West Lines, but to the best of the Affirmant's Memory, not less than three, which seemed to the Affirmant as intended to have been drawn with a purpose to express the several Divisions that had been thought of for a Partition Line between the two Provinces aforesaid; but by the said John Hide and his Son siting between the Affirmant and the said Lord Baltimore, the Affirmant was not near enough to observe, so precisely the Places by which the said Division-Lines passed, as he would otherwise have done, but, in the Lord Baltimore's Discourse, he seemed to the Affirmant to be well acquainted with the Situation of the principal Parts then discoursed of, which were the Provinces of Pensilvania and Maryland, and particularly with the Situation of the three lower Counties, which the Affirmant well remembers, because the said Lord

Baltimore then proposed entirely to release all his Claim to the said Counties, and argued that, as the said Counties were by his Letters Patent within the Description of the said Province, and the Crown made some Claim to them, it could not but strengthen the Title of the Proprietors of Pensilvania to the same Counties, or Words to that effect; but having spent several Hours together, the Company parted, for that time, and the Affirmant having left Egland in the same Month, can't say what was further done therein.

The same, [Int. 60. fol. 157.]

Saith that he having come into Pensilvania in the same Ship with the Father and Mother of the Plaintiffs in the Year 1699, lived in their Family at the Time that John Penn was born, which was in January in the same Year, at Philadelphia, in this Province, and the Affirmant afterwards accompanied the Father and Mother of the Complainants, with the said John an Infant under two years old, on their Way toward England, as far as the Capes of Delaware, and although the Affirmant was intimately acquainted with the Affairs of the said Family, he never heard, and firmly believes, that the said John Penn never was in Pensilvania or any other Part of America from that Time, until after the Month of May 1732; and that the Plaintiffs Thomas and Richard Penn were born in England; and never heard, and verily believes that the said Thomas Penn never was in America, until after May in the Year 1732; and that Richard Penn has never been in America to this Day.

Letitia Aubrey, aged 60. [Lib. A. fol. 134. Int. 31. fol. 138.]

That the Plaintiffs are her Half Brothers, and she has known them from their respective Births, and saith the Plaintiff John Penn was born at Philadelphia in the Province of Pensilvania in America, which she can depose, because she remembers the said Plaintiffs Birth there, where the Affirmant's said Father and Family then resided; and in or about the Year 1701, her said Father and his Family left Pensilvania aforesaid, and came to England, and brought the Affirmant, and the said Plaintiff John, along with them, and the said Plaintiff was then about a Year and half, or two Years of Age, and no more, and the Affirmant is certain that, between the Time of the said Plaintiff's coming from Pensilvania as aforesaid, and the Month of May 1732, he the said Plaintiff never was in Pensilvania, or in any other Part of America; And saith the said Plaintiffs Thomas and Richard Penn were born at Bristol in England, after her said Father's Return from Pensilvania aforesaid; And the Affirmant is certain, that the said Plaintiffs Thomas and Richard, or either of them, were not at any time in America,

before the said Month of May 1732, and the Affirmant is enabled to depose as aforesaid, because of her Nearness of Relation to the said Plaintiffs, and the many Opportunities she had of seeing and hearing from them, and must needs have known, if either of them had gone to America, before the said Month of May 1732, and it was in that Month (as she remembers) that the Agreement, or Writings between them and the Lord Baltimore, were executed, at which this Affirmant was present, and remembers the Plaintiff Thomas went to Pensilvania soon afterwards, and upon that Occasion, as she believes, and that it was a considerable time after that, before the Plaintiff John went there; but the Plaintiff Richard has not been there at all.

Thomas Penn, [Lib. A. fol. 5. Int. 31. fol. 9.] a sercant in the family, John Page [Lib. A. fol. 174. Int. 31. fol. 177.]

Both confirm the foregoing Account, that the Plaintiffs were never in America till after the Agreement in Question was executed.

Andrew Hamilton, aged 64, [Lib. C. Fol. 775 Int. 117. Fol. 874. Further on at Fol. 879.]

Says that at a Meeting of the Commissioners on both sides, on 31 October 1732 at Newcastle, a Dispute arising, between the Commissioners, about fixing a Center for the Circle about the Town of Newcastle, and the Maryland Commissioners then proposing that the Commissioners should walk and view the Town, they did so, with some of the principle Inhabitants, amongst whom was one John Hoare, then the Surveyor of Newcastle County, and since deceased; which said John Hoare then produced and delivered to the Pensilvania Commissioners, in order to assist and direct them in finding and fixing such Center, the Map or Plan endorst NEWCASTLE, which Map the said Hoare then told this Deponent, and the rest of the said Commissioners, was an old Map or Plan of the Town of Newcastle, which he had found amongst the Papers in, and belonging to, the said Office of Surveyor of Newcastle County, when he the said Hoare was first appointed and put into that Office. And says he has good reason to believe that the said Map or Plan was drawn or made by one Arnoldus de la Grange, who as he has been informed and believes, was an ancient considerable Inhabitant of the Town of Newcastle, at and before the Grant thereof to Mr. Penn, This Deponent having very frequently had in his Custody, and seen, several antient Deeds and Publick Writings, bearing Date before the said Grant, and also the Attornment of the Tenants of Newcastle to Mr. Penn on his first Arrival there; to which several Deeds, Instruments, and Writings, was subscribed or wrote the Name

Arnoldus de la Grange, which this Deponent was then credibly informed and believes, was the Hand Writing of the said Arnoldus de la Grange; and thereby this Deponent became acquainted with his Character and Manner of Hand Writing, and verily believes all the Names (except a few) which are comprised and set down in the said Map or Plan, are the proper Hand Writing of the said Arnoldus de la Grange.

22D BRANCH, That the Defendant was not deceived in the Plaintiffs Title, which he very well knew, long before the Agreement.

Ferd. John Paris, [Lab. A. fol. 195. Int. 21. fol. 284.]

That he cannot take upon him to say positively, how far the Defendant the Lord Baltimore, at the Time of entring into the said Agreement with the Plaintiffs, was acquainted with the Plaintiffs Title, either to the Province of Pensilvania, or to the 3 lower Counties of Newcastle, Kent and Sussex; but from the Authentick Records, and other old original Papers, which this Deponant hath seen of what past in the Years 1680, 1683, 1684, 1685, 1703, 1709 1716, 1717, and 1725, relating to the said Province and Counties, some of which matters the Defendant himself was (to this Deponent's Knowledge) a Party to, the Deponent doth most assuredly believe, that the Defendant was acquainted with the Title under which the Plaintiffs claimed the said Province and Counties at the Time of, and long before the entring into the said Treaty; nor did the Deponent ever hear, that Proprietary William Penn's Title to the said Province of Pensilvania had been, by any Person, or in any Sort, objected to, as imperfect, or any way insufficient; and, as the Deponent always understood the said Agreement between the Parties to this Cause, the Substance thereof appeared to the Deponent to be, that, in Consideration of Lord Baltimore's releasing to the Plaintiffs his Claim to the 3 lower Counties, the Plaintiffs should release to him, a Part of the Province of Pensilvania; In which Light Deponent conceived, that the Plaintiffs Title to the said Province of Pensilvania was the Matter that was essential and material to the Defendant.

The Defendant in his own Answer, Fol. 206. Says he always lookt upon the three lower Counties to be his Right, and to be appertaining to his Province, and he never acknowledged or believed that the Plaintiffs had any Right or Title thereto whatsoever. How then could he be deceived in the Plaintiffs Title to them, if he never believed they had any?

Besides, it's he conveys his Pretensions to the lower Counties to them, not they to him.

What they convey to him, is out of their Province of Pennsylvania, which Province is exprest, in their Charter, to commence from the Beginning of the 40th Degree.

Moreover neither Party covenants that he has any Title to convey what either of them releases, but they were mutually to release their Pretensions, whatever they were, good, bad, or indifferent, to the other.

23D BRANCH. Of the East and West Bounds of the Peninsula and where the Bay of Delaware ends, viz. at Bombays-Hook, about 30 Miles below the Town of Newcastle.

Samuel Preston, aged 75, [Lib. B. Fol. 312. Int. 5. Fol. 315.]

Says the said Peninsula is bounded, on the Eastward from the Cape of Virginia to the Cape at the Mouth of Delaware Bay called Cape Enlopen or Inlopen, by the Ocean. From thence, by the said Bay of Delaware. which is generally believed to extend as far as Bombay-Hook on the said Bay. And, from thence by the River of Delaware.

James Logan, aged 66, [Lib. B. Fol. 76. Int. 5. Fol. 81.]

That the said Peninsula is bounded, on the Eastward, as far as the South Cape of Delaware, by the Atlantick Ocean; From thence, more Northerly, by Delaware Bay and River. He cannot precisely determine where the Bay of Delaware ends, and the River begins. Has heard, from Navigators, that the Bay ends, and the River begins, at Bombay Hook, because, upon arriving there, they thought the Danger of their Voyage over, and for that they had good Anchorage, and safe riding under an Island there, but his own Opinion has, always, been that the Bay reached to the Bite, between the Mouths of Apoquinimink and Red Lion Creeks.

Thomas Noxon, aged 40, [Lib. C. Fol. 488. Int. 5. Fol. 491.]

The said Peninsula is bounded, to the Eastward, from the most Southern Part thereof to the Mouth of Delaware Bay, near Lewes Town, by the Ocean; From the said Mouth of Delaware Bay to Bomties Hook, now commonly called Bombay Hook, by the Bay of Delaware; and, from the said Bomties Hook, as far as the said Peninsula extends Northwards, by Delaware River.

George Filtzwater, aged 66, [Lib. C. fol. 469. Int. 110. fol. 473.]

That Bombay Hook has always, as this Deponent understood,
41—VOL. XV.

heard and believes, been esteemed the Head of the said Bay of Delaware. That Bombay Hook, or the Head of the said Bay, is about 30 English Statute Miles to the Southward of the Middle of the Town of Newcastle, as he computes and believes. And says he became acquainted with the Middle of the said Town by his having been frequently in that Town.

Samuel Preston, aged 75, [Lib. B. fol. 312. Int. 4. fol. 314.]

Has been acquainted with the Peninsula which contains Part of the 3 lower Counties, Part of Maryland, and Part of Virginia, 53 or 54 Years, by frequently travelling in divers Parts of the said Peninsula; which Peninsula bounds, on Chesopeak Bay, towards the West.

James Logan, aged 66, [Lib. B. fol. 76. Int. 4. fol. 84.]

Also says that the said Peninsula bounds, to the Westward upon Chespoek Bay.

Benjamin Eastburn, aged 44, [Lib. C. fol. 678. Int. 4. fol. 685.]

Has known Part of the Peninsula which contains Parts of Virginia, Maryland, and the three Lower Counties about eight Years. The Peninsula is bounded to the Westward by Chesopeak Bay.

Thomas Noxon, aged 40, [Lib. C. fol. 488. Int. 4. fol. 489.]

Is acquainted with the said Peninsula, and has known it about 20 Years. Became acquainted therewith by travelling in several Parts thereof by Land, by sailing in and out of Delaware Bay, and by sailing in some Parts of Chesopeak Bay; but, more particularly, from making a Survey in 1737, by running a Traverse from the Town of Newcastle, down, thro' Part of Newcastle County, then thro' Kent County, and afterwards thro' Sussex County, to Fenicks's Island, which the Deponent was then told had been formerly called Cape Henlopen, and had been esteemed the Southern Bounds of Sussex County. Says the said Peninsula is bounded, to the Westward, by Chesopeak Bay.

James Logan, aged 66, [Lib. B. fol. 76. Int. 110. fol. 217.]

That the Head of the Bay of Delaware in his judgment is several Miles to the Southward of the Town of Newcastle; but how many, he can't take upon him to ascertain.

Samuel Preston, aged 75, [Lib. B. fol. 312. Int. 110. fol. 447.]

Has known Delaware Bay about 50 Years, and hath heard and believes that the Head of the said Bay is at Bombay Hook on the same Bay, which he believes is about 25 or 30 English Statute Miles to the Southward of the Middle of the Town of Newcastle, but is not very well acquainted with the Distance. That he knows the said Town a long Time, and has been very frequently there.

24TH BRANCH, Proof of our general Map, and where the true Isthmus is, being formed by the Tide Waters flowing very near to within 4 Miles of each other, in Apoquinomy River and Bohemia River.

Benjamin Eastburn, aged 44, Surveyor General in Pensilvania
[Lib. C. Fol. 678. Int. 123. Fol. 685.]

Has lookt on the Map markt P E N, (which is the Manuscript Original General Map whereof you have a printed Copy at the Beginning of this Book) Says it was drawn by himself, and he believes it is a true Representation of the Parts therein described. For Reasons of his Belief says he drew all the Parts layd down in the same, between the Line markt a Parallel of Latitude to the Southernmost Part of Philadelphia City, and another markt T E M, according to a careful and exact Mensuration of the Parts there represented, made by him. That he drew all the other Parts of said Map, representing the Lands one Delaware River, Delaware Bay, and the Ocean, down to the Place in the said Map called Cape Hinlopen, partly, from his own Observations, and partly, from Returns, and Accounts of Surveys, made by Deputy Surveyors into the Office of the Surveyor General of Pensilvania. That Susquehannah River, to the Northward of Conestogo Creek, is laid down by Returns of Surveys now remaining in his Office. That he drew that Part of the said Map which is between the said Line T E M, and the Line markt B A L, on the East Side of Susquehannah River, from actual Surveys made of a great Part of the Lands represented to lie between those Lines Certificates of which Surveys, and Plats of the same, have been returned to, and are now in the said Office. That he drew the Parts of said Map, laid down for, and about, the Head of Chesopeak Bay from the said Line B A L down to the Place in the said Map called Sassafras River, partly, from his own Observations, and partly from the Observations of others, that were communicated to him. And that he drew all the remaining Parts of the said Map, to the Southward of the said Place marked Sassafras River on the said Bay of Chesopeak, from the best Drafts and Maps thereof that he could procure. Has lookt on the Line markt A, and says that the River, where the West end of the said Line terminates, marked M, is called Bohemia River, which flows out of Chesopeak Bay; and that the Water or Creek, where the East end of the said Line terminates, marked N, is called Apoqueminuk, commonly called Apoquinomy, which flows out of Delaware. Has heard, and believes the Tide-Water does flow, in Bohemia River, as high as Letter M, and has also been informed, and believes that the Tide-Water, formerly did flow as high up

Apoquinomy Creek as Letter N, but is now obstructed by erecting a Mill-Dam a-cross the Creek, about a Mile below the Place N. To which Dam he has seen the said Water flow. And believes the said Places M and N, are about four Miles distant from each other. And that he is well assured there is not any Place in the said Peninsula or Tract of Land, where the Tide-Waters, flowing out of Chesapeake Bay, or Susquehannah River, do approach, or come so near to the Tide-Water, flowing out of the Bay or River of Delaware, as they do at the said Places markt M and N.

Thomas Noxon, aged 40, [Lib. C. fol. 488. Int. 123. fol. 519.]

Says the said Map P E N, was drawn by the said Benjamin Eastburn, Surveyor General of Pensilvania; and from this Deponent's Acquaintance with, and Observations from time to time of the several Parts of the Country and Places, laid down and described in the said Map, And from the Deponent's having compared the same with a larger Draft or Map, which this Deponent formerly took and drew of the three lower Counties, and Part of Maryland, by an Actual Survey, or Traverse, run by this Deponent from Newcastle Town on Delaware, down thro' that Side of Newcastle County, and thro' Kent and Sussex Counties to Lewis Town, and to the South Cape of Delaware, and from thence, by the Ocean to Fenwick's Island, and also by and from this Deponent's having taken the Bearings and Distances of several of the Waters and Rivers about the Head of Chesapeake Bay, with, or from, some of the Creeks that empty themselves into Delaware River, and of the Bearings and Distances of some Parts of the same River, he is induced to believe that the Lands and Waters, on the Side of Delaware Bay and River, and the Ocean, are laid down and described, in the said Map, as correctly and truly as the same could be done, without making an Actual Survey of the Out-Lines of the Lands adjoining upon Delaware Bay and River up to the Town of Newcastle. As to the Line markt A, he speaks exactly as Eastburn does, only postively of his own Knowledge, that the Water flows out of Chesapeake Bay to the Head of Bohemia River at the West End of that Line markt M; and that the East End of the said Line markt N, is the Head of Apoquinomy Creek, which empties itself into Delaware River. And says positively that that last Water did flow to Letter N till he himself made the Mill-Dam, which has stopt its Flowing thither, by about one Mile now. He says he has measured the Distance between M and N, and so knows it to be about four Miles. And believes no Waters, flowing out of Chesapeake Bay, approach so near, to any of the Waters flowing out of Delaware

River or Bay, as those do, at the Head of Bohemia River and Apoquinomy Creek.

Thomas Miles, aged 49, Surveyor in another Neighboring Province of New Jersey, [Lib. C. Fol. 541. Int. 123. Fol. 542.]

Believes the said Map was drawn by Benjamin Eastburn; and says that the Draft of the Head of Chesopeak Bay appears to him to be drawn nearly agreeable to what it represents. And that Delaware River, from Naaman's Creek down to Apoquinomy Creek, is drawn nearly agreeable to the Courses of the said River. Which he believes, because he has had frequent Occasions, for above sixteen Years past to survey Lands on the East side of Delaware River, on the Shore side, from the Land opposite to the Mouth of Apoquinomy aforesaid, upward, to the Place markt Naaman's Creek, and, in that Time, having taken the Breadth of the said River by Mathematical Instruments, in two Places, and from other Observations of the Bearings and Distances of the several remarkable Points and Places on the said River, this Deponent in 1733, framed a Draft thereof, from 7 or 8 Miles below Newcastle Town up to ten Miles beyond Newcastle Town; and, has, also, taken a particular Observation from the Town of Newcastle down to the Place on the said River markt P. which is called the Bite; and has, upon Examining, found the said Map to agree with all his said Experience and Observations. Further says, he believes the said Draft of the Head of Chesopeak Bay is truly drawn, because it is agreeable to Observations made by the Deponent the middle of last Month, when, from the Place in the said Map called Turkey Point. he observed the Bearings of Susquehanna, Elk, and North East Rivers, and also the Course of Chesopeak Bay downward. He exactly agrees with Eastburn and Noxon, that the Tide Water flows out of Chesopeak Bay, up Bohemia River, to Letter M. That the other Water up Apoquinomy does not now, by about one Mile, flow to Letter N, because of the Mill-dam, but he has observed how high the Tide rises at the Mill-dam, and the small Ascent of the Branch from thence to Letter N. and says that, before erecting the Mill-dam, the Tide Water did flow as high as Letter N. Says that by riding between M and N. he computes the Distance to be about four Miles. Is not well acquainted with the Peninsula to the Southward of the Parts he has mentioned, but says positively there is not any Place to the Northward of Line A. where the Tide Waters, flowing out of Chesopeak Bay, and Delaware, do approach and come so near as at the Places markt M. and N.

Jacob Heulings, Esq., aged 58, Surveyor in West Jersey [Lib. C. Fol. 530. Int. 123. Fol. 531.]

Has looked on the said Map markt P E N, and says it was

made by Benjamin Eastburn. That he is acquainted with the Water and Branches in the said Map laid down for the Head of Chesopeak Bay, with the Lands lying on Delaware River, between Newcastle Town and St George's Creek and with the Lands lying between the said Head of Chesopeak Bay, and the said Lands lying on Delaware as aforesaid. And verily believes the said Map is as true and exact a Representation of those Parts, as can well be made. The Reasons of his belief are, that he has seen a Map which he was informed contained Drafts of all the particular Surveys of the Land survey'd in Newcastle County. That it appeared by the said Map that all the Land in the said County lying on Delaware River, had been surveyed and were there distinctly and particularly laid down, together with the said River Delaware and the several Creeks or Rivers in the said County running into Delaware; and this Deponent with some other Persons skilled in Surveying, in order to try the Truth of the same Map, did, with proper surveying Instruments, try the Course of the said River Delaware, from Newcastle downward below the Bite markt with the Letter P: which Courses the Deponent has since compared with those laid down in the said Map, and found they exactly agreed with them. That, afterwards, the Deponent, and the Persons aforesaid, went over to the Head of Chesopeak Bay, and there took the general Course and Bearings of the Lands, Rivers and Waters there, (but collected the Distances from the Informations of Persons residing thereabouts) with which Courses and Bearings of the same Lands, Rivers and Waters, and the Informations aforesaid, the Map now produced well agrees. That the Deponent afterwards, rode, divers Times, a-cross, from the said Head of Chesopeak Bay to divers of the nearest Parts of Delaware River aforesaid and the Branches thereof, and computed the Distances as well as he could, and, therefore, thinks the Distance from the said Head of Chesopeak Bay to the nearest part of Delaware River, as laid down in the said Map, is nearly agreeable to the true Distances of those Places from each other. He has looked on the Line A. and gives exactly the same Account as all the rest, of the Tide Waters flowing respectively to the several Ends of M and N of that Line, and believes the Distance between them to be about four Miles. Is not acquainted with the said Peninsula, to the Southward of the Parts he has mentioned, but says (positively) there is not any other Place to the Northward of Line A. where the Tide Waters, flowing out of Chesopeak Bay and Delaware, do approach and come so near each other, as they do at the Places Mark'd M and N.

NOTE--That Place, therefore between M and N, thus established, where the Tide Waters on each side, flow the nearest

to each other, at four, or, as now, at five, Miles Distance, is what we rely on, as the Isthmus and Conclusion of the whole Peninsula. And the Matter mentioned by Mr. Logan in his Answer to the next Interrogatories for judging it to be (what the others swear it is) the nearest, is an exceeding strong one; for in War Time, when they were afraid of Coasting all round the Peninsula, Merchants would most certainly chuse the shortest and nearest Land-Carriage for their Goods a-cross the Peninsula, which he says, was precisely from the common Landing at Apoquinomy Creek, to the common Landing at Bohemia River, which Landing-Places for Merchandise were but about 7 or 8 Miles asunder.

25TH BRANCH, Proof where the before-mentioned Isthmus formed by the flowing Water is, and also, where another Isthmus formed by the navigable Water is.

James Logan, aged 66, [Lib. B. Fol. 76. Int. 6. Fol. 86.]

Takes the Isthmus of a Peninsula to be, where the Navigable Waters, on each side, approach the nearest to each other. Says the Navigable Waters of Apoquiminink Creek, and of Bohemia River, are nearer to each other than any that run into the Bay of Chesopeak, and the Bay or River of Delaware. The Reasons he has to believe the said Creek and River do approach nearer to each other than any other navigable Waters that run into the said Bay or River Delaware, are, that in 1706, he went into a Boat, up Apoquiminink Creek, to the common Landing on the said Creek, and from thence by Land, to the common Landing on Bohemia River aforesaid, which was then reputed to be about 7 or 8 Miles, and at that Time, in the French War, was used as a Passage and carrying Place, the nearest between the said Bays of Chesopeak and Delaware, for the Conveyance of Goods imported from Britain in Fleets under Convoy to Virginia and Maryland, which were consigned to Philadelphia and Newcastle on Delaware. That the Course of Delaware River from Apoquiminink, as far to the Northward as the Town of Newcastle, (which he supposes may be near the same Latitude with the utmost Extent of the Bay of Chesopeak) is not very much different from North, but the Head of Chesopeak Bay is so broken, by the three Arms that make it, which come from Bohemia River, Elk River, and North-East River, and the Necks of Land are so broke, between these several Arms, that there cannot be said to be any Parallelism on that side. That at the Head of Chesopeak Bay the great River Susquehannah enters which last-mentioned River, and the River Delaware, from the said

Head of Chesopeak Bay, so much diverge, that in the Latitude of Philadelphia, (which at the utmost Extent is not above 24 Miles more Northerly than the Town of Newcastle) upon a direct West Course, they are above 60 English Miles distant from each other. That the Waters of Delaware and Chesopeak Bays do so diverge, below, or to the Southward of Apoquinimink and Bohemia aforesaid, that at the Cape or Entrance of Delaware Bay, the Breadth of the said Peninsula, upon a direct West Course, is, in his Judgment, not much, if any thing, less than the aforesaid Distance of 60 Miles.

Thomas Noxon, aged 40, [Lib. C. Fol. 488. Int. 6. Fol. 492].

Says that, if the Isthmus of the said Peninsula shall be judged to be formed by the nearest approach of the flowing Waters out of Chesopeak Bay into the Rivers or Creeks thereof, and of the flowing Waters out of Delaware Bay and River into the Creeks thereof—Then the Isthmus is formed by the Head of Bohemia River, which runs into Chesopeak Bay, and the Head of Apoquinomy Creek that runs into Delaware. The Waters of which Creek and Rivers did, about 12 or 13 Years ago, flow within about four Miles of each other, but now by reason of a Mill erected on the said Creek, they don't flow nearer to each other than about five Miles. But, if it shall be judged that the Isthmus is form'd by the nearest approach of Chesopeak Bay, and Delaware Bay or River to each other—Then the Isthmus of the said Peninsula is formed, by the Easternmost Part of the Head of Chesopeak Bay aforesaid, near the Mouth of Susquehannah and North-East Rivers, and that Part of Delaware River about four Miles below the Town of Newcastle, called the Bite, because, there, as the Deponent from the best Observation he has made believes, the said Bay of Chesopeak, and the River of Delaware are nearer to each other, than any other Parts of the Bay of Chesopeak and Delaware River, or the said Bays of Chesopeak and Delaware, Which Bite and Head-Line of Chesopeak Bay, the Deponent believes are near, or about, twenty-two Miles distant from each other. And that, from the said Bite, and the Head of Chesopeak Bay aforesaid, the Waters of Delaware River and of Chesopeak Bay, do diverge from each other, both upward, and downward.

Thomas Noxon, aged 40, [Lib. C. Fol. 488. Int. 124. Fol. 525.]

He has look'd upon the produced Map mark'd P E N, and upon the Line in the said produced Map mark'd B. Says that the Water at the West End of that Line and Mark'd O, is Part of the Head of Chesopeak Bay, and that the Water at the East End of the said Line at the Letter P. is called the Bite of Delaware River below the Town of Newcastle. And says the Dis-

tance between the Waters at O. at the West End, and P at the East End, is, as he believes, near, or about twenty-two Miles, he being well acquainted with the said several Places and the Lands lying between them, and lives in the said County of Newcastle.

Jacob Heulings, aged 58, [Lib. C. Fol. 530. Int. 124. Fol. 539.]

Says exactly the same as Mr. Noxon, and that he by riding between the said Places O and P, did compute the Distance between them was about twenty-two Miles; and he adds that, at the said Places mark'd O and P, the Bay of Chesopeak and the River of Delaware do approach nearer to each other, than the said Bay of Chesopeak or the River Susquehannah due to the said River Delaware, in any place to the Northward of the said Places mark'd O and P.

Thomas Miles, aged 49, [Lib. C. Fol. 541. Int. 124. Fol. 550.]

Says the same as Mr. Heulings,

Benjamin Eastburn, aged 44, [Lib. C. Fol. 678. Int. 124. Fol. 693.]

Confirms all the same, and says the Distance between O and P, as he computes and believes from personal Observations which he himself has made there, and from credible Accounts which he has had from other Persons, is about 22 English Statute Miles. And is well satisfied there is not any other Place upon the said Peninsula or Neck of Land which lies between the Bay of Chesopeak and Susquehanna River on the one side, and the Bay and River of Delaware on the other, where Chesopeak Bay and Susquehanna River, approach or come so near to the Bay or River of Delaware, as the Bay of Chesopeak at the Letter O does to the River of Delaware at the Letter P as described in the said Map.

NOTE—You are not to expect that the Defendant should endeavour to clear up this, or any other Point, he affects only to render doubtful and uncertain; and therefore, has not examined to any thing in certainty about this, or many other matters; and as the main Waters themselves approach nearest here between O and P, this may be thought, on that account, the true Isthmus; we think otherwise, because the flowing Waters, as before observed, meet, (lower down) within 4 Miles of each other, whereas these are 22 asunder; and we think the narrowest Neck must make the Isthmus which is about 9 Miles more South, than the Line which we are now upon; but, if this be thought to be the Isthmus, it does not at all hurt or effect our Case, or any one of our Arguments.

26TH BRANCH, Proof of several Springs that arise in the Peninsula, and run, from the same common Head, both ways, into the Bays on each side of the Peninsula.

James Scotten of Maryland, aged 36, [Lib. B. Fol. 294. Int. 21. Fol. 295.]

Is pretty well acquainted with some Parts of the Neck of Land [he means the Peninsula] which lies between the Bay of Chesopeak and the Bay and River of Delaware. That the Lands, on the West side of the said Neck, are called Maryland, and are under the Government of Lord Baltimore; and the Lands, lying on the East side of the said Neck, are called the three Lower Counties of Newcastle, Kent and Sussex, and are under the Government of the Proprietors of Pensilvania. Says that the Rivers Choptank—Chester—and Sassafras, take their Rise in the said Neck, and, he believes, empty themselves into the Bay of Chesopeak. And that the Creeks commonly called Jones's and Duck Creek take their rise in the said Neck, and, as he has been informed and believes, empty themselves into the Bay or River of Delaware. Says there is a Pond in the said Neck, called Island Pond, from whence a Stream runs into the Head of Chester River aforesaid. And that there is another Pond in the same Neck, about three Quarters of a Mile distant from Island Pond aforesaid from whence a Stream runs into Chester River aforesaid, and also from whence another Stream runs into Duck Creek aforesaid.

Thomas Powell of Maryland, aged 41, [Lib. B. Fol. 298. Int. 21. Fol. 299.]

Is pretty well acquainted with some Parts of the said Neck of Land which lies between the Bay of Chesopeak, and the Bay and River of Delaware. Says the Lands on the West side of the said Neck are called Maryland, and are under Lord Baltimore's Government; and the Lands lying on the East side of the said Neck are called Newcastle, Kent, and Sussex, and are under the Government of the Proprietors of Pensilvania. Says the Rivers of Choptank and Chester take their rise in the said Neck, and he believes, empty themselves into the Bay of Chesopeak and that the Creeks commonly called Jones's and little Duck Creek also take their rise in the said Neck, and as he believes, empty themselves into the Bay or River of Delaware. Says there is a Pond in the same Neck, called Island Pond, from whence a Stream runs into the Head of Chester River aforesaid, and also, from whence, another Stream runs into Jones's Creek aforesaid. And that there is another Pond in the same Neck, about three quarters of a Mile distant from Island Pond aforesaid, from whence a Stream runs into Chester River aforesaid.

and also from whence, another Stream runs into Delaware. And that there is a narrow Swamp, in the said Neck, from whence, two Streams issue, one of which runs into Choptank River, and the other into Jones's Creek aforesaid.

James Logan, aged 66, [Lib. B. Fol. 76. Int. 21. Fol. 129.]

Is well acquainted with the said Neck of land lying between Chesopeak Bay, and the Bay and River of Delaware, the Lands on the West side of said Neck are Part of Maryland, and with the Inhabitants thereof are under the Jurisdiction and Government of Lord Baltimore; and the Lands on the East side of the said Neck is the County of Newcastle, and further down the Bay of Delaware, are the Counties of Kent and Sussex, and which said three Counties are under the Government and Jurisdiction of the Proprietors of Pensilvania. Says there are several Rivers and Streams of Water which rise in the said Neck, and empty themselves into the Bay of Chesopeak, viz, Bohemia, Sassafra, Chester and Choptank with divers others. Says there are several other Rivers or Creeks and Streams of Water, which also rise in the said Neck, and empty themselves into the said Bay and River of Delaware, viz. Red Lion Creek, St. George's Creek, Apoquiminink Creek (all within a very few Miles of each other) Duck Creek, St. Jones' Creek, Murtherkill and divers others to the Southward. But, as to the first Fountains or Springs of them it's well known that not only Peninsulas but Continents, have most frequently, a rising Ridge, from which the Springs of the Waters, flowing contrary ways often rise very near to each other, tho' their Mouths are, not unfrequently, above 1000 Miles distance from each other. Has heard and believes that some of the Streams, issuing from the Springs in the said Neck, very nearly interlock with each other; but the Navigable Water of the nearest of them, (below what has been abovementioned of Apoquiminink and Bohemia) to the best of his information, is more than twenty Miles Distance.

Mark Munroe, aged 61, [Lib. B. fol. 42. Int. 21. fol. 43.]

Knows a Part of the said Neck of Land, and gives the like Account as the others, as to the West and East Sides of it, being under Maryland and Pensilvania Government. Has seen the River Potomoke—Wicotomoco—Nauticoack—Choptank—Wye, and — Miles, which take their Rise in the said Neck; and he believes, by their descending towards Chesopeake Bay, that they empty themselves into it. Has likewise heard and believes, that the Rivers Chester—Sassafra, and Bohemia also take their Rise in the said Neck, and empty themselves into Chesopeak Bay aforesaid. Has also heard, and believes, that the Rivers Elk and North-East empty themselves into the said Bay of

Chesapeake; but does not know, nor has heard where they rise. Says, that Muspillion and Murderkill, Dover and Little-Creek—also take their Rise in the said Neck, and empty themselves into the Bay of Delaware. And that Lewes Creek, formerly called the Whorekills—Broadkill—Prime-Hook—Slaughter-Creek—Cedar-Creek—Duck-Creek—Blackbird-Creek—Apoquinimink—St. George's—Christiana—and others empty themselves into the Bay and River of Delaware; but where they respectively take their Rise, knows not. That one of the Branches of Nauticoak River and one Branch of Muspillion Creek aforesaid flow from a Pond of Water of about 4 or 5 Acres. And that there is another Branch of the said Muspillion Creek, whose Rise he does not know, which extends itself much further to the Westward than the said Pond; and believes it takes its Rise from the same Swamp or Pond with another Branch of the said River Nauticoak. And that one of the Branches of Murderkill aforesaid, at its Rise, is divided from the Rise of another Branch of the said River Nauticoak, only by a small Ridge of about 3 or 4 Rods Breadth. And that the main Branch of the said Murderkill, extends still much further to the Westward. That one other Branch of Murderkill aforesaid, and a Branch of Choptank River aforesaid, take their Rise from one and the same Marsh or Piece of low Ground, containing about 7 or 8 Acres. That one of the Branches of Dover Creek, and of the said River Choptank, take their Rise from one and the same Piece of low Ground or Swamp, containing about 40 or 50 Acres. And that several of the Rises of the Rivers and Creeks aforesaid, that empty themselves into Delaware Bay aforesaid, lie to the Westward of the Rises of the said Rivers that empty themselves into the said Bay of Chesapeake: so that they interlock in many Places.

NOTE—These 4 last Depositions are to counterprove an idle thing, attempted by one Witness for the Defendant, who wants to carry the Isthmus (of a Peninsula) up, he himself knows not where, into the main Continent, he having found out a Place where two little Springs of Water rise, very near together, within a Quarter of a Mile of each other, and which Waters he does not pretend are Tide Waters, or flowing Waters from the Sea, Bays or Rivers. To answer any Pretence, therefore, of that kind, we have proved what? Why that down below, in the very Peninsula itself, there are many such Places, not only where the Spring Heads almost meet, but where they quite meet, and more than meet, for that they interlock; Nor is that all, for, we have gone much farther, and shewn several and several Waters, rising in the very Peninsula itself, and from one and the same Swamp or Head, which run one

way into Chesapeake, and the other way into Delaware and which, according to this Notion, would make the Peninsula (pardon the Absurdity of the Expression, for the sake of exposing the Absurdity of the Point contended for) to consist of several compleat Islands.

27TH BRANCH, Proof where Lord Baltimore's oldest Line, which he claimed in 1635, lies.

Benjamin Eastburn, aged 44, [Lib. C. fol. 678. Int. 129. fol. 704.]

Has again lookt upon the Map markt PEN, and upon the Red Line therein, markt 1635, and says that Line is drawn agreeable to a Line drawn for the Northern Bounds of Maryland in another Map produced to him, whereon these Words (Map of Maryland 1635, copied per Herman Moll) are endorsed, and at the top of the Inside whereof is the Title *Nova Terra Mariae Tabula*. And has heard and believes the last-mentioned Map was publisht in the Year 1635, by Order of the then Lord Baltimore Proprietor of Maryland, and fixed in a Book publisht by the same Proprietor, intituled, A Relation of Maryland, together with a Map of the Country the Conditions of Plantations and his Majesty's Charter to the Lord Baltimore, translated into English.

NOTE—The Copy of Lord Baltimore's Map of 1635, produced to this Witness in America, is an exact Copy made from that in Sir Hans Sloane's Book, proved by Doctor Stack here. And this Line proves two very material Things, viz.

1. That tho' Lord Baltimore, so early, claimed, above all the Bay of Delaware, above all the Peninsula, above the true Isthmus of that Peninsula, and even to the Head of Chesapeake Bay, and quite to the Extremity of the 40th Degree compleat, yet, all that was South of the Line which we have now granted to him by the present Articles by near 8 Miles. (And that Width of 8 Miles is 5 whole Degrees in Longitude.)
2. It proves where he himself placed the Line of 40 compleat in 1635, namely, precisely at the Head of Chesapeake Bay, and 23 Miles South of every Part of Philadelphia. But now, he says, modern Discoveries have carried the Line of 40 compleat up as high as, or even above Philadelphia: so contends that his Grant of Part of a Peninsula shall also grow to that Extent up into the main Continent.

28TH BRANCH, Proof where the Octorara Line run by Lord Baltimore in 1683, lies; also where the Line for Temporary Jurisdiction, lately run in 1739, by Order of the King in Council, lies.

Benjamin Eastburn, aged 44, [Lib. C. fol. 678. Int. 125. fol. 696.]

Has lookt upon the Map now produced, markt P E N, and upon the Line in the said Map markt B A L. says, the said Line is called or known by the several Names of the Octorara Line, Colonel Talbot's Line, and Lord Baltimore's Line, but most commonly by the Names of the Octorara Line, and Lord Baltimore's Line. And says, that the Reason of the said Line being called by the said several Names, was, as he has heard and believes, the said Line was run and markt out by one Colonel Talbot, from the Mouth of Octoraro Creek, as described in the said Map; and that the same was so run and laid out by the Order and Direction of Lord Baltimore; and who, as he has heard, was present at the Running of the same Line or Part thereof. And says he has heard and believes that the Course of the said Line was run from the Mouth of the said Creek East, according to the Compass. Says, there are several People settled and dwelling upon the South Side of the said Line, and near thereto, who hold their Lands by Grants from the Proprietor of Maryland, and own that Government. And that as he believes, there are not any Settlers to the Southward of the said Line (and to the Westward of the 3 lower Counties) who hold their Lands under the Proprietors of Pensilvania, or own the Government of Pensilvania. And says, there are also several People settled upon the North Side of the said Line, and near thereto; and that the greatest Part of them hold their Lands by Grants from and under the Pensilvania Proprietors, and own that Government. And that there are also some People (but the Number of them he knows not) who are settled to the Northward of, and near to the said Line, who hold their Lands by Grants from the Proprietor of Maryland, and own that Government; and that the first of such Settlements under Maryland Rights, was not above 30 Years ago. And says, he has lookt upon the said Map, and upon the Line therein markt T E M. And says, the said Line is called The Temporary Limits between the said Provinces of Pensilvania and Maryland, and was run, in pursuance of an Order of the King in Council, in the Months of April and May, 1739. That the said Line, from the East End thereof as far as the River Susquebanna, was run, by this Affirmant, as a Surveyor on the Part of Pensilvania, and William Rumsey, and John Ladd, as surveyors on the Part of Maryland, under the Directions of certain Commissioners appointed by the respective Governors of both the said Prov-

inces. And says the Course of the said Line is true West. And that the said Temporary Line, at the said River Susquehanna, is between three and four Miles to the Northward of the West End of the Line in the said Map markt B A L. or Octorara Line aforesaid And further says, that the residue of the said Line, which is on the West Side of Suquehanna River, was run by this Affirmant and Samuel Lightfoot, according to the Directions of the said Order of the King and Council, The Place of Beginning of such Residue of the said Temporary Line from the West Side of Susquehanna River aforesaid, being first settled and agreed upon by and between the said Commissioners on both sides.

NOTE WELL—The Order made by the King in Council for running this Temporary Line for the Exercise of Jurisdiction, and to prevent Riots, was made in 1733, pending this Suit. Lord Baltimore would not consent that the very Line of the Articles should be run for that Temporary Limit, lest it should confirm the Articles; and yet it was to be something near that Line, but not the very Line of the Articles; Therefore it was ordered, That, on the East Side of Susquehanna River, the Temporary Line should be (not just fifteen Miles, but) fifteen Miles and a quarter South of Philadelphia, and, on the West Side of Susquehanna River, (not just fifteen Miles, but) fourteen Miles and three quarters South of Philadelphia.

This is exceedingly material, for hereby it appears that the Temporary Line, when 15 Miles and a quarter, is yet near four Miles (and the real Line of the Articles is full four Miles) North of the Octorara Line; just so much, and for the whole Length of the Longitude of Pensilvania, (which is no less than five whole Degrees in Longitude) have we given, by the present Articles, over and beyond the most excessive of all the Claims from time to time made by Lord Baltimore, and his Ancestors, purely as a Consideration, and a very large and ample one too, to buy off his Nominal Claim to the three lower Counties. Nay, we have given a great deal larger Space; for please to remark the Octorara Line of 1683, was run East according to the Compass, and this Temporary Line is run true East and West, allowing for the Variations; so that when you come to run any Distance Westwards, then instead of four Miles they will be 14 or 21 Miles, or a great deal more even than that asunder; All which Space for the whole five Degrees of Longitude, we have granted to him, on our Part by the Articles, as the valuable Consideration for purchasing the Release of his Claim to the three lower Counties, and all this Land so given by us to him, is at least 26 Miles above every Part of the Bay of Delaware,

and is not in the Peninsula, but up within the main Continent, at least seventeen Miles further North than our true Isthmus. And at least nine Miles further North than the upper Isthmus. To such a great Degree had his former Claims and Encroachments extended; and to so much greater a Degree, beyond all that, have we now given to purchase our Peace.

29TH BRANCH, containing Proof of many old Maps Foreign and English, (made before the Year 1680) which lay down both Cape Cornelius and Cape Hinlopen, and in the same manner as the Map in question did, also, where our Cape Hinlopen really lies; That the whole Country thereabouts was formerly called Hinlopen, as well as that particuler Spot, that there is the Appearance of a Cape at our Cape Hinlopen; That the South Bounds of the Whorekiln District, or Sussex County, extended thither; That the Dutch had a Boundary Tree in their time, there; That Mr. Penn granted out Lands to that Place, (as soon as ever he had his Feoffment) particularly to the Duke of York, and several others; and still possesses very near to it; and that the first Cursory Claim of Maryland a little North of that South Boundary, began but in the Year 1696; also an Account for what Reasons, something like the Name of that old Cape has, lately, been transferred up to the Mouth of Delaware Bay.

Thomas Grame, aged 51, [Lib. C. fol. 666. Int. 130. fol. 672.]

Has lookt upon the Map, markt D U T, and says, that the great Bay or River laid down therein, next to Chesopeak Bay, is now called Delaware Bay. That he has lookt upon the Place laid down there, for the Entrance into the said Bay of Delaware. And says the Capes, that form the Entrance into the same Bay, are, in the said Map, called Cape Cornelius and Cape May; To the Southward of which, there is another Cape laid down, in the said Map, which is there called Cape Hinlopen. Does not know when the said Map was printed or published: but says, he was at Leyden in Holland, in 1712, and there bought the said Map, amongst a Bundle of other Maps, all loose, at a publick Auction.

Benjamin Eastburn, a Surveyor, aged 44, [Lib. C. fol. 678. Int. 130. fol. 705.]

Has lookt upon the said Map markt D U T, and says, the great Bay or River laid down in the said Map, next to the Bay of Chesopeak, is now called Delaware Bay. That there is a

Cape laid down in the said Map, to the Southward of the Entrance into the said Bay of Delaware, which is there called Cape Hinlopen. And the Westernmost Cape, which forms the Entrance into the said Bay, is there called Cape Cornelius, and the Easternmost Cape May. [What are the very Words of our Articles? at Cape Hinlopen, which lies South of Cape Cornelius.] Has seen Maps publisht in a Book generally called Ogilby's America, in which the said Capes, to the best of his Memory, are all called by the same Names, given to them in the said Map markt D U T. Has never seen any Map or Maps of the same Bay, which he believed were publisht before the year 1680, wherein they were called by other or different Names. Does not know when the said Map markt D U T, was publisht, but believes it was made a long time ago, and before the Year 1680. And the Reasons of such his Belief, are, that he has heard and believes, the Dutch were formerly in Possession of the Province of New York, and all the Lands between it and Delaware Bay and River, and of the three Lower Counties of Newcastle, Kent, and Sussex on Delaware; which Possession they surrendered some time in 1664, to the English. And it appears by the said Map, that all those Counties and the several Parts of them, represented in the said Map, are distinguished and called by their former Dutch Names; and yet, the several Parts of Virginia and New-England, there, laid down, are, for the most part, called and distinguished by English Names.

Ferd. John Paris, [Lib. A. Fol. 195. Int. 20. Fol. 280.]

That he doth not know, nor hath he any reason whatsoever to believe, that in the Entering into, or concluding the said Agreement with the Lord Baltimore there was any manner of Deceit or Imposition put upon the Lord Baltimore, by describing two Capes on the Eastern side of the Peninsula, one called Cape Cornelius, and the other called Cape Hinlopen; nor in laying down Cape Hinlopen below, or more Southward, than Cape Cornelius, and the Reasons why this Deponent doth not believe that his Lordship was at all imposed upon, or deceived therein, are, that the Lord Baltimore's own written Map, so produced and mark'd by him, appeared to contain both the said Capes, with their Names, in the like manner, as the written Map so produced by the Plaintiffs, or one of them did. And not only so, but this Deponent hath seen printed Maps which appear to be (and this Deponent supposes the same are) old foreign Maps; and hath also seen a large printed Work of several Volumes in Folio, said to be done by John Ogilby Esq; Cosmographer and Geographick

Printer to the late King Charles the Second, and said to be printed (and which this Deponent supposes might be printed) in the Year 1671, before the Date of any of the said Grants to Proprietary William Penn; in one of the Volumes of which Work, now produced and shewn to this Deponent, and Letter'd on the Back thereof (Mr. Ogilby's Atlas, Tom. 2.) a printed Map is contained, between Fol. 168 and 169, wherein both the said Capes are clearly and distinctly mark'd, in some such like manner, to this Deponent's Belief and Apprehension, as they were in the Lord Baltimore's, and in the Plaintiffs respective written Maps, so produced as aforesaid.

James Logan, aged 66, [Lib. B. Fol. 76. Int. 11. Fol. 109.]

Saith as he has collected from his Reading, that, after the Northern Continent of America had been discovered by Sebastian Cabot sometime before the Year 1500 by Commission from King Henry the Seventh of England, the first Englishman, that this Affirmant finds to have taken Notice of the said Bay and River now called Delaware, was the Lord Delaware, who in his Voyage to Virginia as Governor of that Colony, in the Year 1610, seems to have given it that Name, some time after which, it is most certain, that the Dutch were the first that took Possession of the Land upon the said River and Bay; and Cornelius May, a Dutch Skipper, in his Voyage to New Netherland appears to have given his Christian Name to the Southern Cape, and his Surname to the Northern Cape of the said Bay, which Name the said Northern Cape retains to this Day; and from the said Cornelius it appears, that some Place in the said Bay, was called Newport May and saith, that he finds also, by the Swedish Histories, that Gustavus Adolphus, King of Sweden, who was killed at the Battle of Lutzen in Germany, in the Year 1632, had in his Life-time, sent a Colony of Swedes into the said Bay and River; but is well assured, from the said Histories, that under the Reign of Christiana, Queen of Sweden, between the Years 1640 and 1645, a large Colony of that Nation were sent into the same Bay and River, who built several Forts, and made considerable Settlements, very soon after their Arrival there: particularly at Elsenburgh, on the East Side of the said Bay; and on the West of the said River, upon Christiana Creek, so called from the said Queen's Name; also at or near Upland, which Name that Place retained till the Proprietor William Penn's Arrival, who changed it into that of Chester; And further saith, that after this, (as he finds by the said Histories) in the Year 1655, the Dutch Government of New Netherland, considering those Settlements of the Swedes as an Intrusion and Invasion of their Right and former Possession, sent a mili-

tary Force sufficient to dislodge them; upon which the Swedes submitted, and from that time acknowledged the Dutch Government. But in the Year 1664, (as he has collected from Histories) a Fleet was fitted out from England, to reassert the ancient English Claim, as Prior to all the others Possessions: which Fleet first attacking the Fort at New Amstell, now called New York, took the same from the Dutch by Surrender; as also very soon after, the Bay and River of Delaware, which having been, before that Time, called by the Dutch South-River (in contradiction to Hudson's River, which was called by them the North River) the said River, from that Time of its Capture, had its first Name of Delaware restored to it. And farther saith, that from the said Year 1664. to the Year 1673, the Country upon the said Bay and River, continued under the English Government, and received divers Inhabitants from New York and Long Island: but the Dutch having in the War declared by England against the States General in 1672, retaken the Colony of New York, and with it the said Bay and River of Delaware, the same were re-surrendered by the Dutch, to the English, by the Treaty of London in February, 1673; and, from that Time, the said Country hath ever since continued under the English Government, and particularly under the Government of the Duke of York till March, 1684; at which time the upper and West side of the said River, beginning 12 Miles Northward of Newcastle Town, was by the Patent from King Charles the Second, granted to the said William Penn, with large Powers of Government, under the Title of the Province of Pensilvania, and the following Year, viz. in August 1682, the said William Penn obtaining Grants, from the said Duke of York of all the Lands on the West side of the said River and Bay of Delaware, Southwards of 12 Miles Distance from Newcastle, to the Cape, he, in the said Year 1682, arrived himself in the said Province, and transported thither, from England, a vast Colony, in 32 Ships, at sundry times before he himself left the Country in 1684; in which Expedition, during the said William Penn's continuance in the Country, (which did not amount to the full Term of 2 Years) he the said William Penn (as this Witness is well assured from the intimate Acquaintance he had afterwards with the said William Penn's Affairs) expended not less than a Sum between 6 and 10,000*l.* sterling. And further saith that the said Province of Pensilvania, and the three Lower Counties are well known to be now very populous, and in flourishing Condition, but can't possibly give an Account of the Number of Taxables, or People in General, in the said 3 Lower Counties, having never in the Course of his Business had occasion to be acquainted therewith.

The same, [Int. 29. Fol. 149.]

That he is acquainted with the Bay of Delaware, having gone twice down the said Bay to Sea, and came twice up the same from Sea; but never had occasion to observe the Capes thereof. That he has seen several Maps of that Part of America, published before the Year 1680, but having no previous Notice of being interrogated thereto, this affirmant is not so well prepared to answer as he otherwise might have been, but well remembers to have seen Captain John Smith's Map mentioned in the Affirmant's Answer to one of the preceeding Interrogatories; and also has seen a Map published by the Lord Baltimore himself in the Year 1635, with a particular Account of his Province of Maryland, which this Affirmant presumes will be produced upon the Hearing of this Cause, but does not remember, in the said Map, any Notice was taken of the Capes of Delaware aforesaid; that the Affirmant has also seen a Dutch Map of New Netherland, which appeared to him, to have been published while the Country was in the Possession of the Dutch; the Author of which, to the best of this Affirmant's Remembrance, was Jonekers; and also this Affirmant has seen a Map published in Ogilby's America, which, to the best of his Remembrance, was printed in the Year 1671, in both which last mentioned Maps, there are two Capes expressed or laid down to the Southward of the said Bay of Delaware; the most Northerly whereof was therein called Cape Cornelius, and the more Southerly (now generally called the false Cape) was therein called Cape Henlopen or Hinlopen. And this Affirmant further saith that the true Name of the said last mentioned Cape appears to have been taken from the Word [Heenloopeen] according to the true way of spelling it, which word, being Dutch, is in the Dutch and English Dictionary publish'd at Amsterdam by William Sewell in the Year 1708, there interpreted (to run away;) but the word (Inlopen) in this Interrogatory mentioned, he conceives ought to have been wrote (Inloopen) which in the said Dictionary is interpreted [to run in, to flow, or stream into.] And the Affirmant saith, that he hath been very credibly informed that the most Southerly of the said Capes, at some Distance from the Southward at Sea, makes the plain Appearance of a Cape: but Navigators finding it otherwise, upon a nearer Approach, gave it the aforesaid Name of Hinlopen or Heenloopeen, implying that it vanishes or disappears, and in process of Time, the Term was changed into Inloopen, and transferred to the more Northerly, and real Cape and Entrance into the said Bay of Delaware; as more properly suiting the same.

Thomas Noxon, aged 40, [Lib. C. Fol. 488. Int. 29. Fol. 507.]

Is pretty well acquainted with the Bay of Delaware, which he has known about 20 Years, and has twice by Sea come into and gone out of the said Bay, and gone up and down the same. That the true Southern Cape, which forms the Mouth of Delaware Bay, is the Cape near Lewes Town but to the Southward of that Cape, and about 7 or 8 Miles to the Southward of Indian River, upon Fenwick's Island, there is the Appearance of Another Cape, well known to Sailors by the Name of the false Cape, which the Deponent hath heard frequently called Cape Henlopen by ancient People—which last-mentioned Cape from the Seaward at a Distance, has the Appearance of a Cape, but as it is approached nearer, that Appearance vanishes. Says that, about nineteen Years ago, the Deponent coming from Jamaica in a Vessel bound for New York, in some distress, endeavoured to make some Land to the Westward; that the first Land they made was the said false Cape, which the Mariners on Board, from its appearing like a Cape, apprehended it was the Southern Cape that forms the Entrance of the said Bay of Delaware. That an ancient Sailor, then on Board, who said he had been thirty Years at Sea, and part of that time in the Dutch Service, said it was the false Cape that the Dutch had called Cape Hinlopen which, he said, signified in English, Cape running away, or disappearing. That the Commander of the Vessel, discrediting what the said Sailor had said, stood in towards the same, till the main Land rose, and they came into the Shoal Water; and then, they found that the said Appearance, as a Cape aforesaid, had vanished. That thereupon, they stood away to the Eastward, and afterwards, saw the true Southern Cape of Delaware Bay. Further says, he has seen a Map in Ogilby's Book of America, and three others, (which he takes to be either Dutch Maps; or Extracts from them, by the Names of the Places being wrote in the Dutch Tongue) and which he apprehends were made before 1680, wherein the said false Cape is laid down, by the Name of Cape Hinlopen, and the said true Cape by the Name of Cape Cornelius. He understands the Dutch Tongue pretty well, and believes the said Interpretation of the Words Cape Hinlopen, which are Dutch Words, was rightly given, by the said Sailor as aforesaid. Does not understand the meaning of the Word Capin lopen, taken together, but understands the Word lopen, which is also a Dutch Word, and signifies running or going, in English. That the Distance between the true and false Capes aforesaid he believes to be near or about 20 English Miles.

Thomas James, Pilot, aged 49, [Lib. B. Fol. 30. Int. 29. Fol. 33.]

That he has observed the Capes, that from (form) the Entrance into the Bay of Delaware, which are now called Cape May and Cape Hinlopen, and that, to the Southward of the Entrance into the said Bay, there is the Appearance of two Capes, tho' in reality there is only one true Cape, and which is the most Northerly, and is now called Cape Hinlopen. That this Deponent hath seen some old Swedish and Dutch Drafts of the Bay and River of Delaware, which to the best of this Deponent's Remembrance, bore Date about the Year 1672; and that in those Drafts there was but one Cape laid down to the Southward of the said Bay, which was called in the said Drafts Cape Cornelius, and is the Cape at the Entrance of the said Bay, now called Cape Hinlopen.

The same, [Int. 19. fol. 30.]

Has been acquainted with the Bay and River of Delaware, and with the Sea-Coast, to the Southward of the Entrance into the Bay, for 40 Years past; having, for all that Time used the Sea, and has been a Commander and Pilot of Vessels, for about 28 Years of the said Time. That upon the Sea Coast, to the Southward of the Entrance into the said Bay, and about 18 Miles from the said Entrance, there is the Appearance of a Cape, which off, at a Distance, at Sea, and upon the first making of it, from the Southward or Eastward, appears bluff, and like the upper Cape at the Entrance of the said Bay, now called Cape Hinlopen; but as you sail to the Northward, and approach nearer the same, it decreases and disappears; for which Reason it is sometimes called the false Cape. That the said Place which has the Appearance of a Cape aforesaid, has been formerly called Cape Hinlopen; and this Deponent has been informed by his Father, who was a Mariner, that the same was also sometimes called Cape James, or Cape Hinlopen, and sometimes the False Cape. That the before-mentioned Cape, at the Mouth or Entrance of Delaware Bay, is now, and has been ever since this Deponent used the Sea, called by the Name of Cape Hinlopen but has heard his Father say, that, in the old Drafts, it was called Cape Cornelius; but that he himself and other old Commanders called it Cape Hinlopen.

George Fitzwater, aged 66, the Defendant's Witness, but cross-examined, [Lib. C. Fol. 469. Int. 19. Fol. 471.]

That he became, and has been acquainted with the Bay and River of Delaware and the Sea-Coast to the Southward of the Entrance into the said Bay, ever since the Year 1706 or 1707, by making several Voyages from Pensilvania to the West-Indies and passing to and fro, through the said Bay and River,

and frequently falling in with the said Sea-Coast, to the Southward of the said Bay, and sailing along that Shore. And saith that he this Affirmant has frequently observed, at his coming in from Sea, that, upon the said Sea-Coast, at about 6 or 7 Leagues from the Mouth or Entrance of the said Bay, there is the Appearance of a Cape, which, upon the first deservyng or making the same, off at Distance, from Sea, looks bold, and like the upper Cape, which is to the Northward thereof, at the Entrance, or Mouth of the said Bay; but, upon approaching or coming nearer to it, the same loses the Appearance of a Cape, and is therefore, called the false Cape; and as this Affirmant has heard and believes, the same was, anciently, called by the Dutch, Cape Inlope, but since his Acquaintance therewith, has been generally called the false Cape.

Elizabeth Morris, aged 65, [Lib. B. Fol. 49. Int. 20. Fol. 50.]

That she has known the three Counties now called Newcastle, Kent and Sussex on Delaware, and the Town now called Lewes, for about 55 Years, which Town, formerly, before it was called Lewes, was called the Whorekill, by the Dutch, and all others. That the County of Sussex aforesaid, before it was called by that Name, was generally called and known by the Name of the Whorekill County. And that Lewis Town aforesaid was formerly in the County called Whorekill, but now is in Sussex County aforesaid. Saith that she has heard, from her Father, and others, that the said County, now called Sussex, was formerly, under the Government of New-York, and knows it has since, been under the Government of the Proprietors of Pensilvania, as one of the three Lower Counties, which were called the Territories of Pensilvania, but never heard the said County of Sussex was ever under the Government of the Proprietors of Maryland. That the said County, now called Sussex, since it has been under the Government of Proprietors of Pensilvania, did extend Southerly beyond the Indian River; which the Affirmant well remembers, because several Persons, particularly the Burtons, Stockleys, and one Fennick, (who the Affirmant heard owned Fennick's Island) lived to the Southward of that River, under the Government of the Proprietors of Pensilvania; and that divers Persons used to come, from beyond that River, and attend Sussex County-Court. And saith that she has heard and believes, that there was a Tree, marked by the Dutch, to the Southward of Indian River, as a Boundary between the said County and the Province of Maryland, which has been long since cut down, upon which a Plate of Brass was fixed, with the Figure of a Ship upon it, but the particular Place where the same Tree stood, knows not; That she never

knew or heard, that any Force or Compulsion have been used, by the Proprietors of Pensilvania, or any Persons pretending Authority under them, to oblige the People of Lewes Town aforesaid, or the Inhabitants living to the South side of Indian River, or within the Bounds or reputed Bounds of the said County of Sussex, to submit to the Government of the Proprietor of Pensilvania, or to acknowledge him for their Proprietor or Landlord, but saith that about 30 or 40 Years ago, she heard, and believes, that several persons, residing in the Southward of Indian River aforesaid, under the Government of the Proprietor of Pensilvania, were disturbed in their Possessions, by Persons claiming Authority under the Proprietor of Maryland in order to compel a Submission to his Government, and particularly heard from one Hill and his Wife, that his Cattle were drove off their Land, for that Purpose; and that she has heard from her Father, deceased, and many others, that there was a Cape, as well as she remembers, to the Southward of Indian River (but knows not certainly where) which was esteemed the Bound of Sussex County.

Samuel Preston, Esq. aged 75, [Lib. B. Fol. 312. Int. 20. Fol. 327.]

That he knows the Bay and River of Delaware, and the three Lower Counties of Newcastle, Kent and Sussex, and that he hath known Lewes-Town and Indian-River in this Interrogatory mentioned, about fifty Years; And saith that Lewes-Town aforesaid was called the Whorekill. before the coming of William Penn, Esq.; into Pensilvania, and while the said Town was under the Government of New-York; but after it came under the Government of the said William Penn, the Name thereof was changed to Lewes-Town; and that the said County now called Sussex, was always called by that Name, since the Affirmant knew it; but, before, and whilst the same was under the Dutch, that County (as this Affirmant heard and believes) was generally called Whorekill County: And that the said County of Sussex, when this Affirmant first knew it, was under the Government of the said William Penn, and, as he believes, was never under the Government of the Defendant, or any of his Ancestors. And this Affirmant further saith, that the said County of Sussex was then generally reputed and believed to extend to a small Inlett called Assawaman, which was then about ten Miles to the Southward of Indian River, and 20 Miles and upwards from and to the Southward of Lewes Town aforesaid. And saith that he became acquainted with the Southern Bounds of the said County, by his being an Inhabitant there for several Years, and being led by the Nature of his Business to a general Knowledge of the said County, and the Inhabitants thereof.

And also saith that it was generally reputed, when this Affirmant first became acquainted with the said County, that the Dutch had claimed the same as far as the Inlett called Assawaman, and near to, or at, a Place called Fenicks's Island; and that, near Assawaman aforesaid, they had set up a Standard, either upon a Tree or a Post, with a Brass-Plate, or Brass-Nails, as a Mark of their Claim. And saith, that he has heard and believes, and it was then so generally reputed and understood, that, soon after the said William Penn's becoming Proprietor of Pensilvania, and the said three Lower Counties, a Mannor was laid out, by or under the said William Penn's Directions, near Assawaman Inlett aforesaid, and was called the Duke of York's Mannor; That there were some Christian People settled to the Southward of Indian River aforesaid, and within the reputed Bounds of Sussex County aforesaid, when this Affirmant first knew the same, and who lived under the Government of the said William Penn; and that he never knew or heard, that any Force or Compulsion was ever used by any of the Proprietors of Pensilvania to oblige the Inhabitants of Lewes-Town, and those living to the Southward thereof, and Indian River aforesaid, and within the reputed Bounds of Sussex County aforesaid, to submit to that Government, or to acknowledge them as their Proprietors or Landlords. And saith, that he this Affirmant does not know of any other force or Compulsion being used by the Defendant or any of his Ancestors, Proprietors of Maryland, to oblige the Inhabitants of Lewes-Town aforesaid, or those to the Southward thereof, within the reputed Bounds of Sussex County aforesaid, to submit to the Government, save that he remembers to have heard it currently reported many Years ago, that Colonel Wittington then Sheriff of Somerset County in Maryland, had threatened the People living under the Government of Pensilvania to the Southward of, and near Indian River aforesaid, That, if they did not pay him some Taxes which he claimed from them, he would make Distress upon them for the same. And the Affirmant further saith, that he has very frequently heard it said by Navigators, that upon the Sea-Coast, about 25 Miles to the Southward of the Mouth of Delaware Bay, there is a Head-Land, which off at a Distance from Sea, has the Appearance of a Cape, and is called Cape Henlopen, but upon a near Approach, the same loses the Appearance of a Cape; and that he this Affirmant has seen the said false Cape, laid down in several Dutch Maps as a Cape, and therein called Cape Henlopen.

*John Teague, of Maryland, Planter, aged 85, [Lib. B. fol. 225
Int. 20. fol. 225.]*

That he knows the Bay and River of Delaware, and the Coun-

ties of Newcastle, Kent and Sussex, in this Interrogatory mentioned, and that he has known the Town, now called Lewes in the County of Sussex, for near 50 Years; and saith that the same was formerly called Whorekills, and retained that Name, till about 18 or 19 Years ago, when it was changed to that of Lewes; and that he has also known Indian River in the Interrogatory mentioned, for near 50 Years. And saith that the said County of Sussex was formerly called the Whorekill by the English, Dutch, and other People in general; and that the same continued to be called so for many Years after this Deponent first knew it, but how many Years cannot now say; That then the Name of that was changed into that of Sussex County. And further saith, that the County wherein the said Town now called Lewes stood, when this Deponent first knew the same, was called the Whorekill, and is now called Sussex County, and was then under the Government of the said William Penn; And that this Deponent never heard that the same was under the Government of the Lord Baltimore, or the Government of New-York; And saith that the said County, antiently called the Whorekill, and now Sussex County; when this Deponent first knew the same, extended beyond, or to the Southward of, Indian River aforesaid, and to a Place called Phenix's Island, where this Deponent has been, and was there told, that that was the Exent of the said County to the Southward. And this Deponent saith, that about three or four Years after the Duke of Monmouth's Rebellion in England, but the exact Number of Years ago this Deponent doth not now remember, he this Deponent was at the said Place, called Phenix's Island, in Company with two Persons, who there shewed this Deponent a Square Post of about seven Foot high, with a pointed Head, which had three Brass-Nails driven into three of the Sides of the said Post, the Heads of which Nails were near the Size of an English Halfpenny; and which Post this Deponent supposed had been fixed there by the Indians, till he was told by the said two Persons, and afterwards by several others, that they believed the same had been placed there by the Dutch. And saith that he heard, some time after, that there was also found, upon the said Island, near, but further to the Southward of the said Post, a Tree, whereon was a Plate of Brass, which, having been grown over with the Bark, was discovered, upon cutting up and splitting the said Tree into Fence-Rails, which Information, relating to the said Tree and Plate of Brass, this Deponent had from the Son of one Thomas Mumford, who told this Deponent he had it from his Father, who had lived with Mr. Phenix, upon the said Island, and also from many others; And that he this Deponent has likewise

heard that to the West or North-westward of the said Island, and within about a Half a Mile thereof, had been also found another Tree markt on two sides thereof, with three Notches; That this Deponent does not know that there were any Christian People settled to the Southward of Indian River aforesaid, and between it and Phenix's Island, when he first knew the said Places, but that sometime after, one Barton came up from Virginia, and settled on the South-side of the Mouth of the said Indian River. That this Deponent does not know, or has ever heard, that any Force or Compulsion was ever used by the Proprietors of Pensilvania, or any other Persons pretending Authority under them, to oblige the People of Lewes-Town, or the Inhabitants living on the South-side of Indian River, to submit to that Government, but saith that about 50 Years ago, this Deponent, with five others, were prest by the Under-Sheriff of Somerset County, to go and assist him to arrest one Peter Waples for Debt, to the Southward of and near Indian River aforesaid, but the People there opposed them, and rescued the said Prisoner from them; alledging, that the said Under-Sheriff and his Assistants were out of their Precincts, being within the Government of Mr. Penn the Proprietor of Pensilvania. And further saith, that he being summoned up to Annapolis, with two others, to be Evidences, to give Information of the said Opposition, made by the said People at Indian River, he remembers the Lawyers there declared, that if the said Under-Sheriff and his Assistants had had their Bones broken, their Remedy would have been in their own Hands. And saith that afterwards Ephraim Wilson, Sheriff of Somerset County, went up, with a Troop of Horse as this Deponent was informed, and apprehended the said Waples, and carried him bound to Somerset County Prison; And saith that about 50 Years ago, the Land about Phenix's Island aforesaid, and from that, all along to the South-side of Indian River aforesaid, was called Cape Inlope. And this Deponent further saith, that about 50 Years ago, as he was conducting two Dutchmen, who he supposed were Privateers, from Somerset County aforesaid, to Whorekill, now called Lewes-Town, this Deponent remembers that, about four Miles to the Southward of Indian River aforesaid, the said Dutchmen declared they then knew where they were, for that they were at Cape Inlopen.

**William Waples, aged 63, [Lib. B. Fol. 248. Int. 20. Fol. 249.]*

That he has seen the Bay and River in the Interrogatory mentioned, but is not well acquainted with them. That he is well acquainted with the County of Sussex on Delaware, and has been in the Counties of Newcastle and Kent, but is not

well acquainted with them. And saith, that he has known the Indian River and Lewes-Town, in the Interrogatory mentioned, about 47 or 48 Years, which Town and the said County of Sussex, when the Deponent first knew them, were by the Inhabitants and others, both called Whorekill, and were under the Government of William Penn Esq; and that the said Town is now in Sussex County aforesaid; And this Deponent further saith, that when he first knew the said County of Sussex, his Father settled under the said William Penn, on the South side of the Indian River aforesaid, about three Miles up a Creek, that emptied itself into the South-side of the said River, upon Land which he purchased of President Clarke, and saith that he this Deponent being young then, knew not how far the same County extended to the Southward; but then heard that the said William Penn claimed as far as Fenicks's Inlett, near Fenicks's Island; near which Inlett, at a Place called Inlopen, or Hinlopen, he then heard there had been a Standard or Post put up by, or for the said William Penn, or some other Person who was in Possession before him, with some Brass upon it. And further saith, that there were about ten Families settled to the Southward of Indian River aforesaid, between that and the said Inlett; amongst whom was one Stockely a Magistrate for the said County, then called Whorekill County; one David Jenkins a Constable for the same County, under the Government of the said William Penn; That he has never heard that the Proprietors of Pensylvania, or any Persons pretending Authority under them, ever used any Force or Compulsion to oblige the Inhabitants of Lewes-Town aforesaid, or the People residing to the Southward of Indian River aforesaid, and above the said Inletts, to submit to the Government of the same Proprietors, or to acknowledge them for their Proprietors or Landlords. And further saith, that about 44 or 45 Years ago the Under-Sheriff of Somerset County in Maryland, by virtue of a Writ from the County Court of that County, arrested his Father where he was settled, as the Deponent has above declared, and that his Father refused to acknowledge the Jurisdiction of the said Court, alledging he lived in Sussex or Whorekill County; And that thereupon the said Sheriff departed, and in about a Fortnight after returned, with five Men. and took his Father and tied him; Whereupon four of the Neighbours were sent for, and came there; That a Person standing in the House, named Charles Tindal, said, what will you tie a Man in his own House, and taking a Gun down from a Rack, said, he would clear the House of them; and thereupon his Father was untied; And saith that a Person who was reputed a Man of Substance there, offered to become Bail for his

Father; to which the said Sheriff replied, that if he would go down to St. Martins, he would accept of him for Bail. To which his Father answered, that except he would take Bail, where he had arrested him, he would not give any, for if he had not a Right to take Bail there, he had no Right to arrest him there, and that, afterwards, the said Under-Sheriff and the five Men aforesaid, departed; Which said Under-Sheriff, in about a Fortnight's Time, returned with the High Sheriff of Somerset County aforesaid, and about 20 Men with Arms with him, and seized and bound this Deponent's Father, and the said Charles Tindal, and carried them down to Somerset County aforesaid. And saith that he heard from his Father, and believes, that he was prosecuted in Somerset County aforesaid, and at Annapolis in the Province of Maryland, for not obeying the said Sheriff, which cost him a great Sum of Money; and that in some small time after the said Arrest, the Inhabitants, residing on the South-side of Indian River aforesaid, submitted to the Government of Maryland.

David Hazard, of Maryland, Planter, aged 73, [Lib. B. fol. 239. Int. 20. fol. 240.]

That he has known the Bay and River of Delaware, and the Counties of Newcastle, Kent and Sussex, for upwards of 36 Years past, and has known the Town called Lewes and Indian River in this Interrogatory mentioned, 46 Years, which Town, when he first knew it, was generally called the Whorekill, and the said County of Sussex, when he first knew it, was also generally called Whorekill, and was under the Government of William Penn, Esq; as he was informed; That he cannot say how far the same County then extended to the Southward of Lewes-Town aforesaid, but supposes it extended beyond Indian River aforesaid: because some of the Officers, to wit, a Justice of the Peace, and a Constable for the same County, resided to the Southward of the same River. And this Deponent further saith, that it has been rumoured, as long as he can remember, that there was a Tree, on Fenicks's Island, in which there were Brass Nails drove, as it was said by some Dutch who landed there and claimed it as their Land; and that he was told by an antient Man, of good Credit, named Hugh Tingle, who lived within a Mile or two of Fenicke's Island, aforesaid; That the said Nails were drove into the said Tree in the Form of a Horse shoe, but does not remember that the said Tingle said he ever saw the said Tree. And this Deponent further saith, that, when he first knew the said County of Sussex, there were about half a score Christian Families settled to the Southward of Indian River, near to the same River, and on the Sea-

Coast between the same River and Fenicks's Island aforesaid: which Families were under the Government of William Penn; but the South Bounds of the said County he never knew. That he has never heard that the Proprietors of Pensilvania, or any Persons pretending Authority under them, ever used any Force or Compulsion to oblige the Inhabitants of Lewes-Town, or the People residing on the South-Side of Indian River, to submit to the Government of the same Proprietors, or to acknowledge them for their Proprietors or Landlords; And saith, that he has heard and believes, that one Waples removed from the lower Part of Maryland, and settled on the South-side of Indian River, within the Government of the Proprietor of Pensilvania, as the said Waples apprehended; and that afterwards, the Sheriff of Somerset County in Maryland, with several Men, came to the House of the said Waples, and took him by Force, and carried him back into Somerset County aforesaid. And further saith, that he has heard that Fenicks's Island has been called the False Cape, and by some other Names that he does not now remember.

John Prettyman, aged 62. [Lib. B. Fol. 257. Int. 20. Fol. 258.]

That he has seen several Parts of the Bay and River of Delaware, but is not well acquainted with them, and knows the Counties of Newcastle, Kent and Sussex on Delaware, and has known the Town now called Lewes, and the Indian River, about 43 Years. And saith, that when he this Deponent first knew Lewes-Town aforesaid, it was generally called Whorekill, and the County of Sussex was then also generally called by the same Name of the Whorekill, and was under the Government of the Proprietor of Pensilvania. And that the said Town now called Lewes was formerly in the County called Whorekill, and is now in Sussex County aforesaid, and this Deponent further saith, that he does not know how far the said County of Sussex extended Southward of the said Town now called Lewes at the Time of his first Knowledge thereof, but believes it extended about 12 Miles to the Southward of Indian River; and the Reason he has for such Belief is, that his Father about 43 Years ago removed from Virginia, and came into the Inlett near Fenicks's Island, and loaded his Goods upon the same Island; and that he this Deponent resided, on the said Island and in the Neighbourhood thereof, for a Month or six Weeks, and heard the ancient People who lived there, say that they lived under the Government of Mr. Penn, and that the Dutch had formerly nailed a Brass or Copper Plate, on a Tree or Post in the said Island, which was then looked upon as the Bound between Penn and Baltimore, and that the said Fenicks's Island

was then generally called Cape Hinlopen or Inlopen. And further saith, that there were divers Christian Families, who lived, between the South Side of Indian River, and the Southern Boundary of the same Country; particularly one John Stokely, who was a Magistrate for the same County, and was also an Assembly Man for the said County, and sat as a Representative thereof, at the City of Philadelphia, and also another Person who was a Constable for the same County; and saith he never heard that the Proprietors of Pensilvania, or any Person pretending Authority under them, ever used any Force or Violence, to oblige the Inhabitants of the said Town called Lewes, or the People residing on the South Side of Indian River to submit to their Government, or to own them for their Proprietors or Landlords; and that he has heard, there were Disturbances made, on the South Side of the River, by Persons who were supposed to act under the Authority of the Proprietor of Maryland, but, as he lived on the North Side of the same River, he can give no particular Account of them.

** Woodman Stockley, aged 53, [Lib. B. Fol. 263. Int. 20. Fol. 264.]*

That he knows the Bay and River Delaware, and the Counties of Newcastle, Kent and Sussex on Delaware, and has known the Town now called Lewes, and Indian River, in this Interrogatory mentioned, upwards of 40 Years, and which Town when he first knew it was by the Inhabitants and People in general called Whorekill. And that the said County of Sussex, since he knew it, was always called by that Name, and that the said Town of Lewes is in the same County. And saith, that the same County, when he first knew it, was under the Government of William Penn Esq; and extended about 20 Miles to the Southward of Lewes-Town aforesaid, but how far to the Southward of Indian River the Deponent cannot tell. That he lived, with his Father, above 40 Years ago, who settled on the South Side of Indian River, under the Government of the said William Penn; but knows of no Marks, that were then the Southern Boundaries of the same County. And this Deponent further saith, that there were then half a dozen Families, to the Knowledge of the Deponent, who lived on the South Side of Indian River aforesaid, and under the Government of the said William Penn; which he well knows, because the People, residing there, attended the Court, for that County, at Lewes-Town aforesaid, some of them as Jurymen, and one John Stokely, his Uncle, who lived there, was a Justice of the Peace for the same County. And this Deponent saith he hath never heard that the Proprietors of Pensilvania ever used any Force or Compulsion, to oblige the Inhabitants of the Town

called Lewes aforesaid, or the People residing on the South Side of Indian River aforesaid, to acknowledge them for their Proprietors or Landlords; but this Deponent hath heard that one of the Sheriffs in Maryland came up from thence, and by Force turned a Man out of Possession of his Plantation, and delivered the same to another Person; and the Deponent further saith, that, when he was young, People used to call the Island, now called Fenicks's Island, (which is upwards of 20 Miles to the Southward of the Cape, at the Mouth of Delaware Bay, and to the Southward of Indian River aforesaid.) Cape Henlopen, and then called the Cape, on the South Side of the Mouth of the said Bay, Cape Inlopen.

**John Anderson, [Lib. B. Fol. 269. Int. 20. Fol. 270.]*

That he knows the Bay and River of Delaware, and the Counties of Newcastle, Kent and Sussex on Delaware, and has known the Town now called Lewes, and the Indian River, in this Interrogatory mentioned, upwards of 20 Years; and saith that ever since he has known the said Town, it has been called Lewes, and the said County, since his Knowledge thereof, has been always called Sussex, in which County the said Town stands; and which Town and County, since he has known them, have been always under the Government of the Proprietors of Pensilvania; and this Deponent further saith, about 6 or 7 Years ago, he the Deponent, conversing with one Charles Bright, since deceased, (at the said Bright's House, and on his own Plantation, in Kent County on Delaware) who was then reputed to be 108 Years old) concerning the said three lower Counties falling under the Government of Maryland, the said Charles Bright then told the Deponent that the Boundaries of Penn's Land was at Cape Hinlopen, on Fenicks's Island, and that he the said Charles Bright had lived on Rumney Marsh. near Fenicks's Island aforesaid, some Years, and had frequently seen the said Boundary, which was engraved with Brass, and that he had often seen and knew the Line that run from the said Boundary, which was West, and that the said Charles Bright then desired this Deponent to take notice of what he had said.

Brickus Townsend, of Maryland, aged 33, [Lib. B. Fol. 246. Int. 20. Fol. 246.]

That he knows the Bay and River of Delaware, and has been in the Counties of Newcastle, Kent and Sussex, but is not well acquainted with them; That he has known the Indian River 10 or 12 Years, and first knew the Town called Lewes about two Years ago, which is in the said County of Sussex. That the said County, ever since he knew it, has been under the Government of the Proprietors of Pensilvania; That the Deponent has

heard his Father say, that old Hugh Tingle told him, there was a Tree on Fenwicks's Island, which had eight Brass Nails drove in it, and was supposed to be a Boundary of the Land to take up the Country. That he knows a Place, on Fenwicks's Island, to the Southward of Indian River, which he has commonly heard called Cape Hinlopen, and to the rest of this Interrogatory cannot depose.

James Sangster, aged 58, [Lib. E. Fol. 42. 10th additional Int. Fol. 42.]

That the first Christian People who, he has heard, settled the said Counties of Newcastle, Kent and Sussex were Dutch; That he never heard the said County of Sussex called by any other Name. That as he was travelling up, from Virginia, hither [to Maryland] with his Mother, she shewed him a marked Tree, near an Indian Town, at the Head of a Creek called Assawaman, which empties itself into a small Bay or Sound, a little to the Northward of a Place called Fenieks's Island, and said, that was a Boundary between Maryland and Pensilvania. That the said County of Sussex was, as he has heard, formerly under the Government of New York, and he never understood any Part of it was under the Government of Maryland, (except what lies between the South Side of Indian River, and the North Side of Assawaman Creek aforesaid;) That the Lands, lying, between the said Creek and River, were settled and possessed by some Families under the Proprietors of Pensilvania, until one Peter Waples, an inhabitant of Somerset County in Maryland, about 45 or 46 Years ago, fled from thence for Debt, and settled himself on a Place called Piny Neck, near the South Side of Indian River aforesaid, supposing he was, then, out of the Limits of the said County of Somerset: That, afterwards, the Sheriff of the same County came up, with a Number of Men, took him from thence by Force, and carried him to the Prison of Somerset County aforesaid; That afterwards, one Whittington, who was Surveyor of the same County, as he has heard, came up, surveyed many of the Lands, between the said Creek and River, and dispossessed those that were settled on them under the Proprietors of Pensilvania, particularly one John Stokely who, at that Time was a Justice of the Peace for Sussex County aforesid.

William Burton, of Maryland, Planter, aged 62, [Lib. E. Fol. 32. Int. 2. Fol. 32. and 10th additional Int. Fol. 33.]

Says that he has resided in the County of Sussex and in Maryland for 48 Years past, and that he has heard that the first Christian People who settled the said Counties of Newcastle,

Kent and Sussex, were Swedes and Dutch; and understood, from some Writings which he has seen, that the said County of Sussex was formerly called Dale; and Delaware Bay aforesaid was called Wilk, by the Province of New York; That the said County of Sussex extended Southward to a Creek called Assawaman, about 9 Miles to the Southward of Indian River, and about 25 Miles from Lewes-Town; That he has heard the said County of Sussex, before he came hither, was under the Government of York; but, since, it has been under the Government of Pensilvania; and to his Knowledge the same, or any Part thereof, (except what lies to the Southward of the Indian River) never was under the Government of Maryland; which Part to the Southward of that River, has been under that Government about 45 Years; That about 45 Years ago he was informed, that one Peter Waples, who lived in Somerset County, fled for Debt from the Place of his Abode, to the South Side of Indian River, and settled within five Miles of the Place where the Deponent then lived, supposing he was, then, out of the Limits of Somerset County; That the Sheriff of that County, with about half a dozen Men came and took him, from thence, by Force, and carried him into Somerset County; That soon after this, one Colonel Whittington, being Sheriff of Somerset County aforesaid, came to one John Petijolius, who lived on the South Bank of Indian River, and demanded Taxes of him, which he refusing to pay, the said Whittington distrained some of his Cattle for them, which Things, and some others of the like Nature, so frightened the People to the Southward of Indian River, (which were about 8 Families) that they were obliged to submit to the Government of Maryland, and that most of the Lands which were held by them, under Grants from the Proprietors of Pensilvania, were, after, taken up under the Government of Maryland, and particularly 900 Acres by the said Whittington; and has also heard that Part of those said Lands had, before then, been taken up under the said Government of Maryland; whereupon those People, and the Inhabitants of the said 3 lower Counties, refused to pay any Quit Rents to the Proprietors of Pensilvania, as this Deponent has been informed. That one John Stokely, who was Master of one of the 8 Families aforesaid and who had acted as a Magistrate, in Sussex County aforesaid, after the Submission as aforesaid to the Government of Maryland, accepted of the Commission of a Magistrate under the said Government, and acted thereby in the said County of Somerset.

William Burton, of Maryland, aged 62, [Lib. E. Fol. 32. 11th additional Int. Fol. 28.]

Who has before deposed that he has resided in Sussex County

and in Maryland for 48 Years past, says, That he neither knows nor ever heard, that the Proprietors of Maryland, or any of them, were ever in the Possession of the said Lands now called Newcastle, Kent and Sussex on Delaware, or any Part of them, (excepting in the Lands aforesaid to the Southward of Indian River aforesaid, and a Fort about Christiana, in Newcastle County aforesaid) nor does he know, has heard, or believes, that they or any of them, or any Person under their Authority ever exercised any Jurisdiction, or held any Courts, in the said County of Sussex, nor has he ever seen any Record, or publick Minument, or Writing, purporting any such Jurisdiction, or Courts, held by them, or their Authority, within any of the said Counties.

James Sangster, aged 58, [Lib. E. Fol. 42. 13th additional Int. Fol. 46.]

That he formerly following Whaleing, and thereby became acquainted with the Sea Coast, from the Entrance of Delaware Bay down to the Southward of Fenicks's Island, but has never been very far in the Sea from it; That he observed in foggy Weather, at Sea the said Island had the Appearance of a Cape, which, as he apprehends, is occasioned by Assawaman Sound, which joins to it, but as it is approached nearer, it alters its Form, and does not appear to be a Cape, That he has heard that Fenicks's Island aforesaid, at the first Settlement on Delaware Bay, was called Cape Henlopen; and that it has been called by one or other of those Names ever since; which Island he apprehends, lies 30 Miles to the Southward of the Southern Cape at the Mouth of Delaware Bay; which last mentioned Cape he has heard one Alexander Molleston, an ancient Dutch man, who lived near the same, and one Cornelius Wilbank, about 48 Years ago, say, was called by the Name of Cornelius, and by others, about the same Time, it was called Cape Inlope; That ever since, has been called sometimes by one of those Names, and sometimes, by the other, but by the greater Number it has been called Cape Inlope.

William Burton, of Maryland, aged near 62, [Lib. E. Fol. 32. 13th additional Int. Fol. 40.]

That he has never been at Sea, but has been in a high Wood of about 100 Acres on Fenicks's Island, and on the Sea Coast, which he has been informed by Sailors, has the Appearance of a Cape from the Sea: but as it is approached, that Appearance vanishes, and there is no Cape at all; That it is by some People called the False Cape, and by others Fenicks's Island: he never heard it called by any other Name until he saw the printed Plan or Map, mentioned in the late Agreement, between

the Proprietors of Pensilvania and Maryland, by which it is called Cape Hinlopen; That he never heard the Place called Cape Cornelius in that Map, called by that Name until the Proprietor of Pensilvania arrived in that Province, about 40 Years ago. And has heard his Father say, that the same Proprietor then called it by that Name, but before that Time, as he ever understood, it was called Cape Henlopen.

DEPOSITIONS FOR THE DEFENDANT, WITH SOME OBSERVATIONS THEREON.

And first, as to such of our Witnesses as he cross-examined in order to disqualify themselves, as interested Persons.

1.

Samuel Preston,

Our Commissioner, the Defendant examined to a vast Number of Interrogatories on his own part, as to the Matters in question; so that he is an unquestionable good Witness on our part.

James Logan, our Commissioner, the Defendant cross-examined only as to his Interest, [Lib. H. fol. 99. Int. 1. fol. 100.]

But he answers, precisely in the Words of their Interrogatory, That he is not immediately, or mediately, concerned in the Event of this Suit; nor does he hold, possess or claim any Land, in dispute between the Plaintiffs and Defendant in this Cause, either in the three Lower Counties called Newcastle, Kent, and Sussex, or within the Province of Pensilvania or Maryland.

The Defendant thought this Gentleman (who had once heretofore, gone thro' so many Offices) must needs have some Interest in the Lands in question, therefore he examined one or two Witnesses as to Mr Logan, viz.

Samuel Preston, [Lib. H. Fol. 104. Int. 22. Fol. 116.]

That from 1701 to 1732, James Logan, and some others whom he does not remember, were Principal Managers and Chief Agents in Pensilvania and the three lower Counties, for Mr. Penn and his Family; and had the Power of granting and settling Lands in those Places; and that James Logan was the Principal Actor in the said Affairs.

This is the very thing Mr. Logan himself declares, and it is that which gave him so large a Knowledge, to depose so fully to the several Affairs he speaks to; but that does not disqualify him from being an Evidence now, even if

he had held all those Offices still; whereas, he swears he laid them all down, when he came to be President of the Council there; from which last Office he was relieved, by the present Governor.

John Taylor, the Defendant's Witness, [Lib. H. Fol. 95. Int. 3. additional Fol. 98.]

Has heard and believes that Andrew Hamilton and James Steel, do hold Lands in Kent County, under the Plaintiffs; but says he never heard that James Logan holds, or claims, or has lately held or claimed, any Lands, either in the Part in dispute in this Cause, or in any of the three Lower Counties.

So that Mr. Logan, who knows a vast deal, by having gone thro' all those publick Stations, and who swears that he has now laid down all Officers, and has no sort of Interest, is a clear unexceptionable Witness for Us.

Andrew Hamilton,

Another of our Commissioners, we have examined, only as one of the Commissioners for carrying the Articles into Execution, as to what past at the Execution of the Commission; and to no kind of thing whatever else. Yet him the Defendant cross examined, as to his Interest only, viz. [Lib. H. Fol. 128. Int. 1. Fol. 129.] And he says that he holds Lands in Newcastle and Kent Counties, two of the three Lower Counties, which Counties he understands to be in dispute in this Cause. That the Lands in Kent County, which he holds, were originally granted under the Duke of York, to some of the Soldiers who served at the taking of New York and Delaware, in Consideration of such Service, as appears by the said original Grants, and have been since confirmed by Mr. Penn to their Descendants. That the Lands which he holds in Newcastle County were claimed by one Augustine Harman, under a Right from one of the Ancestors of the Defendant, and by one Green, under a Right from the Plaintiff's Father. Both which Rights were vested in one Mathias Vanbeeber, who sold the same to this Deponent. And this Deponent further saith, that he firmly believes that he shall neither be a Gainer, or Loser, by the Event of this Cause.

We hope this does not disqualify Mr. Hamilton, who is only a Witness as a Commissioner, and, as such, is a very material one.

**James Steel is our last examined Commissioner, and is also examined by Us as to our receiving Quit Rents, and to many other Points. The Defendant cross-examined him as to his Interest, [Lib. H. Fol. 93. Int. 1. Fol. 94.]*

And he says he does not know that he is any way interested

in the Event of the Cause, unless his holding Lands in two of the three Lower Counties shall be interpreted so. And further he affirms and says, that he holds and possesses several Parcels of Land, under the Plaintiffs, in Newcastle and Kent, by ancient Grants.

So much as to our four living Commissioners.

2.

Secondly, As to some of our other Witnesses, whom the Defendant has cross examined as to their Interest.

**John Anderson, Farmer, [Lib. H. Fol. 51. Int. 1. Fol. 52.]*

Does not apprehend himself to be any way concern'd in the Event of this Cause; Tho' he holds some Lands in Kent County under the Plaintiffs, yet conceives that, if the said Counties should fall to the Lord Baltimore, he should still keep his Possession.

John Ball, Blacksmith, [Lib. H. Fol. 18. Int. 1. Fol. 18.]

Does not know that he is interested in the Event of this Cause, but that he is in Possession of a Tract of Land in Newcastle County, the Right of which he has conveyed by Deed to his Son; but that he has his said Son's Promise, that he shall enjoy it during his Life: That his said Land is held under the Plaintiffs. He further says, that he claims a Tract of Land, of Land, under the Defendant, which he believes, lies within the Limit in dispute between the Parties.)

So that, we hope, this Witness is a go one for us, since he is, at least, equally concerned, or more, under the Defendant, than under us.

**John Garretson, Farmer, [Lib. H. Fol. 17. Int. 1. Fol. 17.]*

Is not, to his Knowledge, any way interested in the Event of this Cause, tho' he holds, possesses and claims a Tract of Land whereon he lives, under the Plaintiffs, situate in Newcastle County, within 3 or 4 Miles of Newcastle Town.

James Hendricks, Carpenter, [Lib. H. Fol. 125. Int. 1. Fol. 125.]

Believes he is no way interested or concerned in the Event of this Cause. Neither claims or possesses any Lands in dispute between the two Proprietors, or in any of the three Lower Counties. So the Defendant himself cross examined him to the Merits.

Samuel Hollingsworth, Farmer, [Lib. H. Fol. 29. Int. 1. Fol. 30.]

Does not apprehend himself to be any way interested in the Event of this Suit, nor holds, nor claims, any Lands that he believes to be in dispute in the Cause. So the Defendant went

on and cross examined him to a great number of Interrogatories to the Merits.

Thomas James, Pilot, [Lib. H. Fol. 12. Int. 1. Fol. 12.]

Is not any way concerned in the Event of the Cause, nor holds any Lands in dispute between the Parties. So the Defendant went on and cross examined him to the Merits.

Mark Manlove, Farmer, [Lib. H. Fol. 24. Int. 1. Fol. 25.]

Does not conceive that he shall be any way interested or concerned in the Event of the Cause; but he holds and possesses Part of several Tracts of Land in Kent County. [He does not say under whom.] The Reason why he conceives himself to be disinterested in the Event of the Cause is, because he expects to be quieted in his Possession, whoever gains it.

Elizabeth Morris, Widow, [Lib. H. fol. 26. Int. 1. fol. 26.]

Is no way interested in the Event; neither holds nor claims any Lands in dispute between the Parties to this Cause. So the Defendant cross examined her to the Merits.

Elizabeth Murphy, Widow, [Lib. H. Fol. 126. Int. 1. Fol. 127.]

Is not any way concerned in the Event of the Cause, nor holds any Lands within the Limits in dispute between the Parties. So the Defendant cross examined her to the Merits.

John Musgrave, Farmer. [Lib. H. fol. 34. Int. 1. fol. 35.]

Does not think himself any way interested, or concern'd in the Event of the Cause. And holds or claims no Lands, that he apprehends lie within the Limits in dispute between the Parties. So the Defendant cross-examined him upon a great Number of Interrogatories to the Merits.

Thomas Noxon, [Lib. H. fol. 92. Int. 1. fol. 92.]

Believes he is not any way concerned in the Event, but says, he is possest of some Lands in Newcastle County, that he claims under Grants from the Government of New-York, dated about the Year 1671, and holds or claims no Lands by any Grant or Right from the Proprietors of Pensilvania, or any of their Ancestors: And, therefore apprehends his Title cannot be affected by the Event of this Cause.

William Peterson, of New Jersey, Farmer, [Lib. H. fol. 7. Int. 1. fol. 8.]

Is neither directly or indirectly concerned in the Event of the Cause, and neither holds or claims any Lands in dispute in the said Cause. So the Defendant went on, and cross-examined him to the Merits.

John Prettyman, Farmer, [Lib. H. Fol. 49. Int. 1. Fol. 50.]

Does not apprehend himself to be any way interested in the

Event, but holds a Tract of Land on the South Side of Indian River, under the Defendant, and a Tract of Land on the North Side of the said River in Sussex County, under the Plaintiffs. So that this Farmer, we think, is an equal indifferent Witness.

John Rambo, of New Jersey, Farmer, [Lib. H. fol. 19. Int. 1. fol. 20.]

Is not any way interested in the Event of this Cause, nor holds any Lands within the Limits in dispute between the Parties. So the Defendant went on, and cross-examined him to many Points on the Merits.

John Hans Steelman, Indian Trader, [Lib. H. fol. 127. Int. 1. fol. 128.]

Is no way interested or concerned in the Event of the Cause, and does not hold or possess any Lands within the Limits in dispute between the Parties, or in the three lower Counties.

**Wooman Stockley, Farmer, [Lib. H. fol. 50. Int. 1. fol. 51.]*

Does not expect to be either Gainer or Loser by the Event of the Cause, but holds some Lands, in Sussex County, under the Plaintiffs.

**William Till, Merchant, [Lib. H. fol. 124. Int. 1. fol. 124.]*

Does not apprehend he is any way interested in the Event or Issue of the Cause, but that he holds Lands in Sussex County under the Plaintiffs.

**William Waples, Farmer, [Lib. H. fol. 49. Int. 1. fol. 49.]*

Does not know whether he is interested, or not, in the Event of the Cause, but holds Lands under the Plaintiffs in Sussex County.

Joseph Woods, Carpenter, [Lib. H. Fol. 4. Int. 1. fol. 4.]

Is no way interested in the Event of this Suit; nor does he possess or claim any Lands in dispute in the Cause. So that the Defendant went on and cross-examined him to several Points relating to the Merits.

So that,

**James Steel, *John Anderson, *John Garretson, *Wooman Stockley, *William Till, *William Waples*

Have, as often as they are respectively named in the State of our Depositions, an Asterism or Mark* set before their Names, as liable to the fore-mentioned Doubt only. And they are such Witnesses, as that the Loss of any of them will not be fatal, except as to Mr. Steel, who proves the receiving Quit-Rents by us, and even as to that, and indeed as to every other Point, the Defendant's own Witnesses have most abundantly supplied our Proof, and confirmed it, in the strongest and fullest manner.

NOTE—As the Defendant would have our Agreement to be (at the best) a meer voluntary Agreement, without any Consideration whatever moving from us, and insists, that his Charter comprizes every thing which we granted him by the Articles, we shall be obliged to debate the Extent of the Charter for Maryland: for altho' Pensilvania is granted in express Terms from the Beginning of the 40th Degree, yet, if the Maryland Charter, which was long prior, is to be expounded not by the Landmarks (which it expressly bears in it) but by Degrees, and those too, such Degrees as are now discovered and known, and that Lord Baltimore is intitled also to the every Extent of the 40th Degree, compleat, as now known and found out, and that all this is quite clear, and beyond Possibility of a Doubt, why then, indeed, we have granted him no Territory at all, and the Agreement may be said to be without any Consideration, save this, That it was to end a continued expensive Contest, which had subsisted for full fifty Years together, almost to the ruin of the Parties; and which had hindred also the publick Good, as it stopt the Settling so fine a Colony; And which Considerations alone, might be good, to intitle us to Relief, and the Assistance of a Court of Equity, to carry the Agreement into Execution.

But, on the other hand, if it shall come out, as clear as the Sun, that we have, in this Agreement, granted to him an exceeding large Tract and Territory, Part of our own Province of Pensilvania, above all the Landmarks of his Charter, above every Part of the Peninsula, above the Isthmus thereof, above what was at the time of his Charter known to be the 40th Degree, and above every one of his own successive Claims and Encroachments, from time to time; yea, many Miles above the highest of all his most extravagant Demands, why then, there is every way, such a good, real, and valuable Consideration given, on our Parts, that this can, in no legal Propriety, be called a voluntary Agreement, or an Agreement without Consideration.

3.

The Defendant cross-examined two of our Witnesses, to know if Observations had not been taken at Philadelphia, and where the 40th Degree fell?

John Musgrave, [Lib. II. fol. 34. Int. 8. fol. 37.]

Has heard that there have been Observations formerly made at Philadelphia, and at the Head of Elk River: but knows nothing of the Particulars thereof.

Benjamin Eastburn, [Lib. H. fol. 117. Int. 8. fol. 118.]

Has been informed, that some Persons, several Years ago, made Observations in Philadelphia, in order to discover its Latitude. And this Affirmant has, likewise, made some Observations, for the same purpose. And, according to the best Judgment he can form from his Observations, he believes, that the Market-Street in Philadelphia, does not lie so far North as the Latitude of 40 Degrees compleat, but near to the Northernmost Part of the said Degree. But, as Astronomers differ, among themselves, concerning the Places of the Heavenly Bodies their Declinations, and the Latitude of the Stars, and proper Allowances for Refractions, it is almost impossible to determine the exact Latitude of any Place, with the best Instruments; And as the Instruments, chiefly made use of by the Affirmant, on this occasion, were made by himself, and very imperfect, he cannot take upon upon himself to speak certainly of the Latitude of any Part of the Street aforesaid: And says, that he has heard, and believes, that the Surveyors, appointed by Commissioners, in pursuance of an Order of the King in Council, about the Year 1733, to lay out the Northern Neck in Virginia, did differ, about the Latitude of one Place in the said Neck, fourteen, about another, fifteen, and a third, seventeen, Geometrical Minutes [which is very near 20 Miles.] And that his Information was from John Warner, one of the Persons employed to make the said Observation,

What pretty Work this would make, in explaining the King's Grants by Degrees (especially when there are certain Landmarks in a Charter?) And what a hopeful Account has the Defendant given, by his own Examination of this Witness, of the absolute Incertainty of Degrees, even now?

4.

Next, My Lord examined some Persons, Dependants upon him, to give their Construction and Opinion, as to the Extent of the Charter for Maryland.

Colonel Thomas Colvill, of Maryland, aged 50, [Lib. G. fol. 120. Int. 3. add. fol. 122.]

Has seen the River Delaware at Newcastle Town, and believes it's there, about two Miles wide. And is, at the City of Philadelphia, he believes, about a Mile wide. That the Tide water flows and ebbs, both at Newcastle and Philadelphia and, as he believes, twenty Miles higher. Knows not whether the Water at Philadelphia be salt, brackish, or fresh.

It may be so, as this Maryland Witness of my Lord's says;

but, does it approach to the other Water, to make an Isthmus? No. We prove, that, from our Isthmus, the Waters greatly diverge, both upwards and downwards.

Thomas Hynson Wright, of Maryland, Esq. a Surveyor, and the Defendant's Witness only, aged 52, [Lib. G. fol. 251. Int. 7. fol. 255.]

That he hath some little Knowledge in the Art of Surveying, and that he hath studied the same for about 30 Years last past: and that the Reason of his studying the Art aforesaid, was to qualify himself for the Office of Surveyor, and accordingly, in September 1720, was appointed Deputy-Surveyor of Queen Anne's County in Maryland, which Office he held, until he laid down the same of Choice. And saith, that he hath looked upon the Exhibit, markt No (1.) (which is afterwards said to be a Copy of the Bounds in my Lord Baltimore's Charter) and read and considered the same; And that he is of opinion, all the Land, lying on the North of a Line, drawn East from the Promontory or Point called Watkins Point, unto the main Ocean, and with the main Ocean and Delaware Bay* to the Extent of the 40th Degree of Northerly Latitude, and from thence, by the Degree aforesaid, to the Fountain of Potomack, mentioned in the Exhibit aforesaid, and, from thence, by the West and South Side thereof to Chesapeake Bay, and, from thence, by a strait Line, to the Promontory or Point, called Watkins Point as aforesaid, are included within the Limits of the Charter in the Exhibit aforesaid, mentioned. Saith that, having resided in Maryland, from his Infancy, and travelled thro' the greatest Part thereof, is pretty well acquainted with most Parts of the Eastern Shore; and that he is of opinion, the three lower Counties aforesaid are within the Boundaries or Buttals in the Exhibit aforesaid mentioned, because, the Expressions in the said Exhibit are clear and plain, to any Capacity, excepting that of the 40th Degree; and that, would be improperly applied, to any other Place than the Extent of the Degree; for that, until it comes to the Extent of the 40th Degree, it would be only 39 Degrees, 59 Minutes, and so many Seconds.

NOTE—This Surveyor is a very bad Expounder of the King's Charters; and he is, either a great Quibbler upon Oath, or else, a most wretched Mathematician; for, with his Leave, 39 Deg. 59 Min. is under the 40th Degree; and so is 39 Degrees 1 Minute; and every single Hair's Breadth, from 39 compleat to 40 compleat; altho' none of them are to the Extent of the 40th

*He does not pretend to go up Delaware River; for he can find no such Word in the Charter; and yet, goes to the Extent of the 40th Degree.

Degree compleat. I could wish he were here, to answer one plain Question, viz. Under what Degree is any Place, that lies 30 Minutes North from the Equator? Is it not under the first Degree, altho' it is not to the Extremity of that first Degree compleat? This I would illustrate further, by asking him, Under what Degree 90 Min., or 110 Min., North from the Equator, is? Would he say, they are under the first Degree? If so, he makes more than 60 Min. to a Degree; and it's evident, to common Sense, that they are under the second Degree, for they are beyond the Extent of the first Degree, and, therefore, cannot be in, or under, that.

William Rumsey, of Maryland, a Surveyor, the Defendant's Witness, aged 42, [Lib. G. fol. 129. Int. 7. fol. 130.]

That in or about 1716. he began to study Geometry, Trigonometry, Plain and Mercator Sailing. and in 1724 he was made Deputy-Surveyor of Cecil County aforesaid, and has acted in that Station ever since, and saith he hath studied some other Branches of the Mathematicks, as Spherical Trigonometry and Dialling; but, as he had not a regular Education, he looks upon himself to have, in relation to them, but a superficial Knowledge and further saith, that the Exhibit, No (1.) he has read and considered; and that he is of opinion, that all the Land lying under the 40th Degree of North Latitude between the Bay or River* Delaware, and the Meridian of the first Fountain of Potomack River, is within the Limits of the Charter; unless the 40th Degree of North Latitude should intersect the aforesaid River of Potomack. before it reaches that Meridian; And all the other Lands, lying under the 40th Degree of North Latitude are excluded thereout. Saith, that he is well acquainted with divers Parts of Maryland, being born, and having lived most of his Life-time, therein. Saith, that he has been acquainted with the three lower Counties, about 17 Years, where his Business has frequently called him; Saith, that he apprehends, that all the three lower Counties aforesaid, are within the Limits of the Charter aforesaid. That the Reason of such his Opinion is, because the said three lower Counties are a Part of the Peninsula in the Charter mentioned, lying to the Southward of the 40th Degree of North Latitude.

NOTE—This Man contradicts the Fact admitted in fol. 13. of my Lord's Answer; where my Lord expressly admits that the three Lower Counties lie in the Peninsula, and also, above the Peninsula, within the Main Continent; for this Witness says they are all a Part of the Peninsula. So that

* Where has he got the Word River? There is no such in the Charter.

we are in a fine Case; First, my Lord admits a Fact, to draw us into a Reliance and Dependance upon it, and then he examines this, and many other Witnesses, to disprove his own Answer.

And another partiular Error of this Witness is, that he is looking to the 40th Degree as now known (108 Years after the Time of my Lord's Charter) whereas, if he were to go according to the Degree at all, it should be the Degree as then known.

But the greatest Opinions have, unanimously, been, that my Lord's Charter is to be expounded according to the Landmarks, and not any imaginary Points in the Heavens, the Uncertainty whereof the Defendant himself has given such an Account of.

Hugh Jones, of Maryland, Clerk, the Defendant's Witness, aged 49, [Lib. G. fol. 4. Int. 7. fol. 5.]

That he has been conversant in the Mathematicks, and esteems himself, in some measure, skilled in them; That he learnt Arithmetick at School, studied Geometry, Geography and Astronomy in the University of Oxford: where, having taken the Degrees of B. A. and M. A. he was recommended, by the then Principal of the College, Doctor Win, Bishop of St. Asaph, to Doctor Robinson, then Bishop of London, who advised the Deponent to perfect himself, as well as Time would allow, in the Mathematicks, for that his Lordship intended to send him over to the Colledge of William and Mary in Virginia, as Professor of the Mathematicks. That, thereupon, the Deponent applied himself to the Study of Algebra (which he had not applied himself to before) under the Instruction of Mr. Hudson of Christ-Church, and was admitted Professor of Mathematicks in the Colledge of William and Mary aforesaid, in the Year 1717, and continued studying and teaching the Mathematicks there till 1721, and has made it his occasional Study ever since. Says he has lookt upon the Exhibit No 1, and has read and considered the same; and, according to the best of his Understanding and Judgment, All the Lands, between the Tide Water *1 of Delaware, and the Meridian of the first or Westernmost *2 Fountain of Potomack, lying under the 40th Degree of Northern Latitude from the Equinoctial, that is, at the Distance of 2400 Minutes from the Terrestrial Equator, *3 are within the Limits and Bounds mentioned in the Exhibit aforesaid. That he has been, often, in 10 of the 12 Counties of Maryland, and knows several Places in each of them, and has known the same about 20 Years: 14 of which he has resided in Maryland. That he has known the County of Newcastle about 8 Years, but is

unacquainted with Kent upon Delaware and Sussex. That, for upwards of 8 Years last past, he has been Minister of a Parish, contiguous to Newcastle County, and has had frequent Occasions to go to Newcastle. Further declares, that, to the best of his Judgment and Understanding, all and every Parcel of the three Lower Counties are contained and included within the Limits and Bounds specified in the Exhibit; and saith that the Reasons for his Judgment concerning the Extent of the Charter to the said Distance from the Equator, are (1st) Because, to him, it seems located where New-England ends. *4, and Smith, in his General History, published before, and Ogilby, in his America, printed after the said Charter, both agree, that no Part of New-England could come more to the Southward than 2400 Minutes North of the quator *5; 2dly, The different Cases of the Words Sinus and Æstuarium; the first, used in respect of Chesopeak, and the latter, in relation to Delaware; for, had the Northern Limits been intended to have stopped short of the 40th Degree compleat, it might have been in a Part of Delaware as much as Sinus as Chesopeak is; And the Reason why he conceives all the three Lower Counties to be within the Limit aforesaid, is because, from Observations taken, and Lines run, by himself and others, and Knowledge of the Situation of the Places, he is fully convinced, that the most Northerly Part of Newcastle County (the most Northerly, of the three) (supposing Newcastle County not to extend more Northerly than 12 Miles North of Newcastle Town) is, at least, seven Minutes to the Southward of the said 40th Degree *6.

NOTE—This is the very Person. who with his self-esteem'd, but false Reasoning, has infected Lord Baltimore, and made him fly off from his Agreement: and, therefore, we may expect to hear his Arguments enforced against us. But he has made several great Blunders in his Opinion.

1. He takes all the Lands between the Tide-Water of Delaware and the Fountain of Potomack; but why the Tide-Water? He afterwards tells us, that the Word Sinus is used as to Chesopeak, and another different Word, Æstuarium, as to Delaware. He does not, indeed, give us his Construction of Sinus, but that's wholly immaterial, as no Part of Chesopeak Water was mentioned for the Northern Boundaries. And the only material thing is this Æstuarium of Delaware, which, I am sure, the Crown did not intend should be the Tide-Water of Delaware, because had he lookt a little further, he would have found that the Crown itself has, in the very Body of the Charter, called it Æstuarium de Delaware vocat Delaware Bay. Now we have proved, by a Number of Witnesses, that the

Head of Delaware Bay ends at Bombeys-book, a great way below Newcastle; whereas, they have got a single Witness, who believes the Tide-Water flows 20 Miles above the City of Philadelphia,) which is really above 60 Miles more North than Bombeys-book, and which 60 Miles at a Touch, this Witness gets, only by striking out of the Charter the English Word Bay, and inserting in it a Word, which he likes better. Tide-Water.

2. This Witness makes another very kind Construction for his Patron, of the King's Charter; for he says, all the Lands from the Tide-Water of Delaware, to the Meridian of the first or westernmost Fountain of Potomack; which is saying, to the first, or to the furthest and last Fountain. For the Charter begins with granting the most Eastern Lands first, (the Part of the Peninsula) and then proceeds and grants on to the Westward, to the Meridian of the first Fountain. But this Witness is right, for his Patron, he knows it will grant more, if it goes on and grants quite to the westernmost Fountain and therefore he has again inserted Words into the Charter of the first (or westernmost) Fountain. I know my Lord's Western Bounds do not affect us, but this abundantly serves to shew the Willingness of the Witness, and his Inaccuracy too, even when on his Oath; so that no regard ought to be had to his Opinion, who, if he can't find, will yet make and add Words, to favour his Intentions, and his Patron.
3. Having a very bad Argument to maintain, he affects to use very obscure and improper Terms, in order to confuse the Matter, even so as to talk very near to Nonsense. He says all the Lands lying under the 40th degree, that is, at the Distance of 2400 Minutes, are within the Limits and Bounds. If he means that it is not the Degree, nor under the Degree (as some of his fellow Witnesses contend) until that Degree is compleat, (and it certainly is compleat at the 2400 Minutes from the Equator) then, all these Lands, lying under the 40th Degree compleat, are no Lands at all; for the imaginary Line of 40 is an indivisible Line, without any Space or Width in it. What can he mean then, by the Lands lying under the 40th Degree, and yet, at the Distance of 2400, at which Distance they are not under, nor can possibly be under, the 40th Degree? I know what he means, and will tell you, and it's plain that he chose and affected to speak in these dark obscure Terms, because, if he puts his Argument into a clear Form of Words, the Fact, upon which it

depends, glares him in the Face, and destroys his Argument in one Moment. He unquestionably means this. All the Lands South of 2400 Minutes North from the Equator, or South of that 40th Degree which is compleat at the Distance of 2400 Minutes North from the Equator, are within my Lord's Charter. Had he used these Words, they carry a very clear Proposition in them, and necessarily imply another, more short and more clear, that the whole Space of the 40th Degree was granted to Lord Baltimore; which brings, it to a Fact that that whole Degree was granted to Lord Baltimore; whereas I contend, that it was not, it could not, and it was not intended to be granted to him, for it was, before, most precisely, granted to the Council of Plymouth for the ruling of New England, and my Lord's own Patent declares in express Terms, that his Province was to go to the Place where New England ended.

4. As to his first Reason for his Opinion, because it seems, to him, that Maryland was located where New England ended, we contend, it not only seems so, but is exprest, as clearly as Words can express, that it really was located where New England ends, and that is what we rely on.
5. He has a second Reason; for he says, that Smith and Ogilby both agree, that no Part of New England could come more Southward than 2400 Minutes North of the Equator. I have lookt, pretty well, into Smith and Ogilby both, and don't find that either of them agrees to any such matter. But, if they did both agree it, I am very sure of two things; 1st, That Smith, who originally printed his Book in the Year 1612, (and Ogilby afterwards copied from him) did not mean 2400 Minutes, as one Mr. Jones should observe, or judge them to be, 128 Years after he writ, viz. now in the Year 1740. And, 2dly, That the King's Charter, under the Great Seal, disagrees both with Smith and Ogilby; for that Charter to the Council of Plymouth grants, in plain English Words, from 40 Degrees to 48 Degrees inclusively; whereas any such Expression of Smith and Ogilby would make it exclusively.
6. As to his Reason for saying, that all and every Parcel of the Lower Counties are included in Lord Baltimore's Charter, had he studied that Charter well, and, with it, my Lord's own Answer, he might have found much better Reasons to the contrary. For, 1st, The Lower Counties were culta. 2. My Lord had (as to this Matter) only a Part of a Peninsula, and admits upon his own Oath, that some of the Lower Counties lie out of that Peninsula,

for that they are up within the Main Land and Continent, 3. My Lord was bounded on the East only by the Ocean, not so much as by the Bay or River, (much less by the Tide-Water) of Delaware. 4. He was to go from his South Bounds, usque ad such Part *Æstuarii* de Delaware, vocat, Delaware Bay, quæ subjacet the 40th Degree. And, 5th, Were he to go by the Degree (which he was not) and were he to go to the 40th Degree compleat (which he was not neither) yet, it must not be the Degree which this Witness has found out now in 1740, but the Degree as known then in 1632. And that, as my Lord himself fixt it, by his own Book and Map, printed and publisht in 1635, three Years after his Charter, and after he had actually made his Settlement in the Country, and got acquainted with it, was, precisely, at the Head of Chesopeak Bay; whereas this Witness's modern Observation, makes it, now, full 26 Miles and 3 Quarters more North than it was esteemed to be then.

These are my poor Thoughts and Observations, who never learnt Algebra, or any other Part of the Mathematicks.

And I can't omit one Observation upon this Witness. He swears he is Minister of a Parish contiguous to Newcastle County; so that, should my Lord, by the Help of his Opinion, extend his Province, this Witness will naturally extend his Parish; no small Temptation to a Minister of Maryland, where, as I observe by the 16th Page of the Maryland Law-Book (proved in the Cause) the Minister is intitled to a very large yearly Allowance, of no less than 40 Pound of Tobacco per Poll, on the taxable Inhabitants (which are almost every Person, Servants and Slaves) within his whole District; so that the County of Newcastle, with about 11 or 12,000 Persons in it, would make a fine Addition to Mr. Jones's contiguous Parish, as well as to my Lord's Province.

But, for an absolute Answer to this Witness's Opinion, I would apply the solemn Order of Council, made upon Lord Baltimore's own Petition, and after many Hearings by Council, in the Year 1685, declaring that the three Lower Counties were not granted to Lord Baltimore, and ordering a Line to be run to divide them off, in very emphatical Terms, to the 40th Degree. Which Order was also, several times afterwards confirmed.

And I would also apply the Opinions of Sir Clement Wearg, the present Lord Chief Justice Willes, and the present Lord Chancellor Hardwick, all of which, I presume, were

44—VOL. XV.

far better Expositors of the Charter of the Crown, than this Mr. Hugh Jones is; and who unanimously agree that the Landmarks, and not imaginary uncertain Points in the Heavens, were to be his Boundaries.

There is another Observation, too material to be omitted. My Lord has examined a Witness of his own only, one John Miller, (who will be mentioned by and by under another Head) and he has told us, not where the 40th Degree, according to modern Observations, is, (which would have been exceedingly material for my Lord Baltimore to have shewn, who insists that he has a Right to go to the 40th Degree compleat) but he has told us the Latitude of our Cape Cornelius, and that it is in 39 Degrees and 5 Minutes. Now if we should believe this single Witness of my Lord's, and should also agree that my Lord is to go quite to the 40th Degree compleat, even as now sworn to by that Witness, What would be the Consequence of that? Why the Consequence is, that the Line given my Lord by the Articles, is 66 English Miles above that Cape Cornelius; and Cape Cornelius itself is 5 Minutes, which is 5 English Miles and $\frac{5}{16}$ ths above the 39th Degree; so that we have granted to my Lord 71 English Miles and $\frac{5}{16}$ ths above the 39th Degree compleat, consequently two Miles and three Tenths of a Mile above this Witness's new 40th Degree compleat?

What can my Lord say to this? He must either say that his own Witness, who took and swore to that Observation (and the only one that fixes the Latitude of any one Place whatever) knows nothing at all of the Latitude he has sworn to, (and which indeed is very true, Degrees being so uncertain) or else, he must admit that we have granted to him, already, two Miles and three Tenths above even his present Demand.

Such is the Case, the Defendant has made for himself.

5.

John Hart, of Maryland, Ferryman, Defendant's Witness only,
[*Lib. G. fol. 246. Int. 20. fol. 247.*]

He lives at a Ferry in Queen Anne's County, Part of the Peninsula; and the Isle of Kent is separated from the Peninsula by a Water, which, in the narrowest Part of it, where he keeps a Ferry, he believes, is about 150 Yards wide. That the said Island lies to the Westward of the Peninsula, and is Part of Queen Anne's County aforesaid.

Thomas Hynson Wright, [Lib. G. fol. 251. Int. 20. fol. 266.]
Says the same.

Ergo—I suppose the Order of Council was not forged; for there is such an Island, and it lies very near the Peninsula, and consequently, there must have been such an Order of Council relating to it.

6.

The Defendant thought that we had not sufficiently proved his small Loghouse Fort, so he cross-examined two of our Witnesses about Forts, till he got out another very antient Swedish and Dutch Fort, in Newcastle County, one of the Three Lower Counties, which, I suppose, he did not chuse to hear of, viz.

William Peterson, of New Jersey, aged 92, [Lib. H. fol. 7. Int. 4. fol. 10.]

Says, that when he first came into America (which, in Answer to the second Interrogatory, he says was in the Year 1658) there was a Fort by the North side of Christiana Creek, about three Miles from its Mouth, which was then possest by the Dutch, but, the Deponent was informed, originally built by the Swedes, to keep Possession from the Dutch.

John Rambo, of New Jersey, aged 79, [Lib. H. fol. 19. Int. 4. fol. 23.]

He remembers the Ruins of a Fort, which stood about 3 or 4 Miles up Christiana Creek, on the North-East side thereof, and as he believes about 4 Miles North-East from the Town of Newcastle. He has been informed by his Father, and other ancient People, that the said Fort was built and maintained by the Swedes.

I doubt this is not the Fort the Defendant wanted to enquire after; but he has got it, and by it, has himself proved, that the Swedes and Dutch had been settled there, not Lord Baltimore.

7.

The following nineteen Depositions tend to prove two Points; 1. That my Lord Baltimore did, about 1673, burn and destroy a Place, then called the Whorekills, now called Lewes-Town. 2. The Place where those Whorekills were; and that, for a two-fold Purpose, viz. in order to affect our Cape Cornelius, as well as to shew what he did, to assert his Right in the Three Lower Counties.

Boudoin Robins, of Maryland, aged 34, [Lib. G. fol. 282. Int. 7. additional fol. 286.]

Has heard of a Place called the Whorekills, which is now called Lewis-Town, and he understands lies in Sussex County,

about five Miles distant from Cape Hinlopen, markt in the Plan before produced to him Cape Cornelius, and lies opposite to Cape May. Knows the Places on the Sea-Coast called Indian River, and Phenix's Island. Believes the Whorekills is distant, Northward, from Phenix's Island aforesaid, about twenty-two Miles, and about twelve Miles, to the Northward of Indian River.

John Miller, of Maryland, aged 44, [Lib. G. fol. 271. Int. 7. addit. fol. 277.]

Has been at a Place, formerly called the Whorekills, and now called Lewis-Town, which lies in Sussex County, that is near opposite to a Point of Land called Cape May in New Jersey. Has heard that the Whorekills aforesaid were burnt, by one of the Defendant's Officers and Men, but knows not on what Occasion. Is acquainted with Phenix's Island and Indian River, and that the Whorekills is about twelve or thirteen Miles Distance, Northward, from Indian River, and about twenty two or twenty three Miles Distance Northward, on a strait Line, from Phenix's Island. That the Whorekills is situate within Delaware Bay, upon a Creek, about five Miles Distance from the Pitch of the Cape markt Cape Cornelius in the said Exhibit.

Albert Cox, of Maryland, aged 47, [Lib. G. fol. 90. Int. 7. additional fol. 91.]

Has heard of a Place called the Whorekills, and has heard his Father say that he was prest for a Soldier to go burn and destroy all before them at the Whorekills; but whether it was done or not, cannot tell.

Colonel Thomas Colvill, of Maryland, aged 50, [Lib. G. fol. 120. Int. 7. additional fol. 123.]

Has heard of such a Place as is called the Whorekills, which, he understands, is the same Place now called Lewis-Town in Sussex County; Has heard of such a Place as Indian River, but knows nothing of it.

Thomas Hynson Wright, of Maryland, aged 52, [Lib. G. fol. 251. Int. 7. additional fol. 267.]

Has heard of a Place or Town called the Whorekills, lying in Sussex County, and has always understood that the Place now called Lewis-Town, is the Place formerly called Whorekills, and lies opposite to a Point on the North side of Delaware Bay called Cape May. Has heard ancient People say that the Whorekills was formerly settled by the Dutch, and refused Obedience to one of the Defendant's Ancestors; who, thereupon, sent Officers to subject them, and that, he understood, they burnt and destroyed their Habitations.

Gideon Tillman, of Maryland, aged 57, [Lib. G. fol. 202. Int. 7. additional fol. 203.]

Has been to'd by his Father, that he lived with Colonel Francis Jenkins, upon the Whorekill Creek, and that the Place in Sussex County, where Lewis-Town is now built, is the Place was formerly called the Whorekill Town; and hath also heard his Father say that it was opposite to a Cape, but does not remember the Name. Has heard his Father say, that every House at the Whorekill, and the House his Father lived in, were burnt except a House called the Cave which belonged to a Dutchman: And heard his Father say it was burnt by one Captain Howell, to prevent the Dutch taking of it; for that the said Dutch had taken New-York, or some other Place; And that the People of the Town, complaining of the Burden of maintaining the Soldiers, Captain Howell went from the Town, under a Pretence of seeking Relief from the Lord Baltimore, came back the next day, and ordered the Soldiers to separate, and go two together to each House, and burn them; which they accordingly did, after having taken the Arms out of the respective Houses; and then, being afraid to stand it, the said Howell, ran away to New-York. And further has heard his Father say, that he helpt to carry the Chain for the said Jenkins, to survey several Tracts of Land, under the Lord Baltimore, near the Whorekill Town, and in particular to survey the Land on which the said Town stood, before the burning the said Town as he believes. And that the said Colonel Jenkins and his Father, sent their Wives away. from the said Whorekill Town, to Somerset County in Maryland, before the said Burning, for fear of the Dutch. And that after the Burning aforesaid, the said Colonel Jenkins and his Father went themselves to Somerset County aforesaid.

George Veasey, of Maryland, aged 61, [Lib. G. fol. 82. Int. 7. additional fol. 85.]

Has heard of a Place called the Whorekills, lying in Sussex County, but never saw it. Has heard, from some ancient Men, that Lord Baltimore made a Demand of the said Place, and that the People there refused to become Tenants to the Lord Baltimore, whereupon the Lord Baltimore, sent a Party of Men, who burnt a Part of the Town.

James Potter, aged 64, [Lib. G. fol. 150. Int. 7. additional fol. 152.]

Is well acquainted with the Place or Town formerly called the Whorekilln, which is now called Lewes-Town. That it lies in Sussex County. That the Whorekills, now called Lewis-Town, lies opposite to a Point or Cape of Land called Cape Hinlopen or Henlopen, there being a Creek that runs between

the Town and Cape aforesaid. Has heard his Mother say, that her Father removed out of Somerset County in Maryland, and settled at a Place called Rehoboth, within seven Miles of the Whorekills aforesaid; That, some time after, the then Lord Baltimore sent a Captain, with 40 Men, to defend the People there from the Heathen; That the People, being poor, could not maintain the Men sent by Lord Baltimore, but that the People sent his Lordship Thanks, for sending to protect them, but desired the Men might be taken away, because he Inhabitants were poor, and could not maintain them. Whereupon the Lord Baltimore, as this Deponent has likewise heard, said, Poor Rogues! Can't they maintain 40 Men? And, afterwards, sent the said 40 Men to burn the Houses, which was done. Whereupon the People then sent this Deponent's Grandfather, and another Person, to New York, to solicit Relief for the Injuries they had sustained. He has heard of Phenix Island, and is acquainted with Indian River. Does not know how far Indian River is to the Southward of the Whorekilln, but says that Indian River divideth the County of Somerset and Maryland, from Sussex County.

Robert Money, of Maryland, aged 65, [Lib. G. fol. 36. Int. 7. additional fol. 38.]

Has heard his Father, Jeffry Peterson, and Guiseman Cock, say, they were prest, to serve under one Captain Howell, as Soldiers, to attack and demand Possession of a Place called the Whorekills, for the Lord Baltimore, and that they went and burnt a Barn and some Outhouses, and to the best of his Remembrance, that the Inhabitants submitted to them. And he understood that this Transaction was about fifty-seven Years ago [1673].

William Price, of Maryland, aged 66, [Lib. G. fol. 59. Int. 7. additional fol. 61.]

Has heard there is such a Place as is called the Whorekills, in the County of Sussex, but never saw it. Has heard his Father say that Soldiers were sent from Maryland, that did burn some Wheat Fields, or Stacks of Corn, at or near the Whorekills, and that there was not above six or eight Dutch or Swedes Families there, at that time: but how long it is since the same happened, or was done, does not remember to have heard.

Walter Scott, of Maryland, aged 69, [Lib. G. fol. 52. Int. 7. additional fol. 54.]

Has heard of a Place called the Whorekill. Has heard that the Whorekills borders upon the Sea and Delaware. Heard one John Atkey say, that he was one of the Soldiers that was sent

to subdue the Whorekills. And also heard him talk of burning and subduing, but what he does not remember.

Margaret Simpson, aged 69, [Lib. G. fol. 194. Int. 7. additional fol. 195.]

Has heard the Place now called Lewis-Town, was called the Whorekill-Town, as she apprehended by way of Ridicule, and that the proper Name she understood to be Lewis-Town, ever since she knew it, and lies over-against Cape May. Heard that Lewis-Town was taken and burnt by some Persons, but by whom, or on what Occasion, knows not. Knows a Place called Indian River, and that, about 40 Years ago, she lodged at the House of one Jenkins, who said he was a Tenant of one William Clark of Lewis-Town. And she knew one John Stokely, who lived about a Mile to the Southward of the Place where Jenkins lived, and below the Place where Indian River now empties itself into the Sea; which said Stokely was while he lived there, to the best of her remembrance, a Justice of the Peace for the County of Sussex aforesaid. And believes the Mouth of Indian River is about eighteen Miles distant from Lewis-Town aforesaid, and lies to the Southward of the said Town.

Martha Johnson, uncertain of her own Age, but believes 72, [Lib. G. Fol. 210. Int. 7. additional Fol. 211.]

Knows a Place, which was called the Whorekills, and is called Lewis Town, and lies in Sussex County. And she knows of no Cape opposite to it, but the Cape near Lewes-Town. Says she saw the Whorekilns burnt, when she was a Girl, and her Father's House in particular; but by whom, or by whose Order, knows not, but has heard it was done by one Captain Howell. She has heard of Indian River and Phenix's Island, but does not know where they lie.

John Webster, of Maryland, aged 72, [Lib. G. Fol. 125. Int. 7. additional Fol. 126.]

Knows a Place called the Whorekills, lying in the County of Sussex. That it lies upon a little Creek. That over or opposite to it, across the Creek, there lies a Cape, that was called Cape Hinlopen when he lived there, which was about 51 Years ago, [about 1689] Knows a Place called Indian River, which lies 10, 12 or 14 Miles to the Southward of the Whorekills, and is not acquainted with the Sea Coast.

The last Witness we cross examined.

James Morgan, of Maryland, aged 80, [Lib. G. Fol. 91. Int. 7. additional Fol. 93.]

Has heard of a Place called the Whorekills, and has been told, by two Persons, that they went along with Captain

Howell, who had a Commission from Lord Baltimore, to burn and destroy the Whorekills. That, when they came there, they gave the Inhabitants three Days time to remove their Effects. That the Dutch Families did take the greatest Part of their Effects away; but the English Families that were then there said, They would remove nothing, and if they would burn they might: That thereupon, they fired the Town and returned home.

John Fleaharty, of Maryland, aged 102, [Lib. G. Fol. 145. Int. 7. additional Fol. 148.]

Knows the Place formerly called the Whorekills, the Place which is now called Lewes Town, opposite to Cape May, and near Cape Hinlopen, marked Cape Cornelius in Lord Baltimore's Map. And says that the County of Sussex was formerly called Whorekill County. Has heard the Lord Baltimore send an Officer, and some Men, to demand Possession of the Whorekills of the Dutch Inhabitants, which they refused to give; upon which, he heard, some Houses were burnt. Knows the Place called Indian River, and that the Whorekill Town, now called Lewes Town as aforesaid, is about 7 or 8 Miles to the Northward of Indian River as he believes.

Isaac Freeland, [Lib. H. Fol. 65. Int. 10. Fol. 67.] George Ross. [Lib. H. Fol. 69. Int. 10. Fol. 73.]

That the Town, now called Lewes, was formerly called the Whorekills, and that they are one and the same Place.

John Teague, our Witness, [Lib. H. Fol. 43. Int. 5. additional Fol. 45.]

Was also cross examined to this; and he says that Lewes Town, and the Place formerly called the Whorekills, is one and the same Place.

To what End the Defendant examined these 19 last Witnesses, I don't know; nor have we cross examined any one of them (save John Webster and George Ross, and our own Witness Teague) to any Matter whatever.

It is most certain, and we readily admit, that the Cape, near Lewes Town, which in my Lord's Map was marked Cape Cornelius, (and rightly so, according to all the ancient Maps) has been, for several Years past, called, by some Persons, Cape Inlopen or Hinlopen; The Name of the old Cape, which was a deceitful Cape to Sailors, or something like that Name, being, latterly, transferred up, from Phenix's Island, to the Place where there is a real and actual Cape which is at the Mouth or Entrance of Delaware Bay, and is nearly opposite to Cape May. But this Fact, if it stood alone, is of no sort of Service to

Lord Baltimore; But it is accompanied, by his own Witnesses, with such other Facts as prove the substance of the thing entirely with us.

Do these Witnesses prove that the Whorekills is the Place which was originally called Hinlopen by the Dutch, and so named in their Maps? For that's the precise Matter put in Issue by my Lord's Answer as the Instance of Deceit upon him?

Is there any Possibility of Doubt whether the old Cape Hinlopen was, or was not, at the Mouth of the Bay? Certainly there can be none. Where does the very first Dutch Record that we have, in the Year 1629 or 1630, place it? Why 8 great Miles (8 Leagues) South of the Bay of the South River. Where does the Order of Council of 1685 place it? Why down somewhere in the Sea; for the Peninsula, which was then, (by the Parties Agreement as I may say) to be divided, was such a Peninsula as was bounded by Delaware River, Delaware Bay, and the Ocean; which last Boundary had been absolutely wrong if the old Cape Hinlopen had lain at the Mouth of the Bay. Where do all the ancient Dutch and Swedish Maps place Cape Hinlopen? Why just as my Lord's own Map does and as the Articles express it, South of Cape Cornelius.

Do these Witnesses fix this New Cape Inlopen or Hinlopen, to be the South Bounds of Sussex County? No. If the Fact had come out so, Then, indeed, my Lord's Map might have been wrong, and might have deceived him; but all his own Witnesses, as well as ours, say, that this New Cape Hinlopen, was not the South Bounds of Whorekill, or Sussex County; but, that Sussex County went down to Indian River, and below or South of Indian River, and that a Magistrate of Sussex County lived in that South Place; and that that Indian River, itself, now, at this very time, divides Maryland and Pensilvania; which Indian River they make to be 12, 13, 14, or even 18 Miles South of, or below the Whorekill Town, or this new Cape Hinlopen. So that, had we taken our South Bounds of these lower Counties (as my Lord Baltimore insinuates we ought to have done) up, at this New Cape Inlopen or Hinlopen, tho' he himself gave us, and we were really intitled, down to the Old Cape Hinlopen. We should have been deceived with a witness, for we should have given up to him 18 Miles of what his own Witnesses prove is in our actual Possession. And please to note all our Witnesses and Evidence prove our true South Bounds go down lower yet, quite down to the Old Cape Hinlopen.

And altho' my Lord's Sheriff of Somerset County made a sort of fresh Pursuit, for the first time, up above Phenix Island, near to Indian River, only about the Year 1696, when one Peter Waples run away for Debt out of Maryland, yet, he has not proved a single Settlement made by him North of Fenix's Island, to this Hour.

I would here, in time, observe one thing, the Defendant imagines that the Whorekills, and the Cape, are synonymous Terms for one and the same Puncto or Point of Land, whereas, the Whorekills was always a District or Territory, and a very extensive one, under the Dutch, and the Duke of York, and was made into a County (with its particular Bounds, which pray mark, in the written Evidence) by William Penn, as soon as ever he took Possession of the County in 1682. Who then, instantly, granted out to Fenix's Island, which is the old Cape Henlopen, to the Duke of York, to himself, and to numbers of other Persons; and the Cape is a Point of Land only, not a District or County.

Well, but my Lord made all this Proof, for another Purpose also; for he swears, Fol. 77, that he believes his Ancestors exercised all Acts, of Proprietorship and Government in the Lower Counties, and again, Fol. 188, that he and his Ancestors have claimed, maintained and supported their Right to the lower Counties, and have been at Expence in building Fortifications therein, to defend the Inhabitants from the Indians. So that this most cruel Action, of burning the Whorekills, the Wheat Fields, the Stacks of Corn, the Barns, the Out-houses and the Dwelling-houses of all the poor Inhabitants, was a [Maryland] Act of Proprietorship, and which, he, also, did, in a very good Humour, and under Terms of great Pity and Compassion to the poor People. What, are they poor, can't they maintain 40 Men? Then, burn all that the poor People have in the World! A dreadful Act of Propriety? And what aggravates the Inhumanity of this savage Action is, that these Men were sent, colourably, to defend the Inhabitants from the Dutch. (at a remarkable time, about 1673, when the Dutch threatened, and actually did re-enter) and to defend them from the Heathen; but, in reality, to burn all they had in the World. This is his way of Asserting his Right, and defending his Tenants: And what do his own Witnesses prove, besides and beyond all this? Why, that the Town was settled before. But, then, he burns out the People, and falls to surveying the very Town, which our Witnesses, and his too, prove

to have been then an ancient settled Town by the Dutch. There is one other Instance, or two, of my Lord, and his Ancestors, asserting their Right to the lower Counties, which his Witnesses don't mention. His Grandfather invented, and he revived, a sham Order of Council about Clayborne and the Isle of Kent; and he himself is denying, and swearing away, his own solemn Agreement; which are Acts highly worthy to be ranked along with the foregoing Instance; being, each of them, an Act of so high and flagitious a Nature, as none, but himself, would give an Opportunity to have told of them. But please to observe, besides all the Depositions which prove that my Lord Baltimore never possessed the Whorekills, but that the Dutch, the Duke of York, and Mr. Penn did, our written Evidence not only corrects the Time of this Transaction, that it was about June or September, 1672; but it shews that Lord Baltimore could not possess the Whorekills; for, on 12th of August 1672, there is Governor Lovelace's Letter to the Governor of Maryland, demanding Reparation for some former Insult. And on 14th April, 1673, the Governor of New York sends the Magistrates of New-castle down, to hold a Court at the Whorekills, to enquire into the late irregular Proceedings there, and to settle the Government and Officers there, under the Duke's Authority, as formerly. And that was immediately succeeded by the Re-entry of the Dutch. After which, and after the English being again repossessed, viz. on 6th November, 1674, there is Governor Andros's Commission to Captain Cantwell and Mr. Tom to repossess and settle the People in their just Rights at the Whorekills; and 5 Days after that, viz. on 11th November, 1674, there is Governor Andros's further Commission, to them two, to administer the Oaths to the Magistrates at the Whorekills. And on 9th January, 1674, there is his Letter to Captain Cantwell, thanking him for having settled the Magistrates at the Whorekills.

So that, the burning the Whorekills by Lord Baltimore was an Act of Power and Force, but not attended with any Possession.

8.

NOTE—Before we go any further in the Defendant's Proofs, it may be necessary to observe, that the following eight of the Defendant's Witnesses, here named, were never at all examined by us, to any Point whatever; but, in the Defendant's own Examination of them, they have proved themselves to be in-

terested in the Dispute; so that we object to them as being disqualified. Their Names, and the Places where they prove their own Interest, are here under marked. So that, as often as their Depositions are mentioned, we put the Mark* before their Names.

*William Barnes, *Lib. G. Fol. 181. Int. 6. Fol. 182.*

*Zebulon Hollingsworth, *Lib. G. Fol. 64. Int. 2. additional Fol. 66.*

*Ann Holy, *Lib. G. Fol. 103. Int. 8. additional Fol. 106.*

*Daniel Needham, *Lib. G. Fol. 155. Int. 6 Fol. 156.*

*Benjamin Peirce, *Lib. G. Fol. 94. Int. 21. Fol. 95.*

*Nicholas Ryley, *Lib. G. Fol. 41. Int. 11. additional Fol. 42.*

*Adam Short, *Lib. H. Fol. 60. Int. 8. Fol. 61.*

*Richard Thomson, *Lib. G. Fol. 109. Int. 21. Fol. 110.*

9.

Joseph Rose, the Defendant's Witness, [Lib. H. Fol. 40. Int. 2. Fol. 40.]

Says that a Paper Writing, No 1. (endorsed a Copy of the Exemplifications of Letters Patent from King Charles the Second to the Duke of York, taken from the publick Registry kept in the Secretary's Office in New Jersey). Also the Paper Writing, No 2. (endorsed Copy of Part of a Deed from the Duke of York, to the Lord Berkeley and Sir George Carteret, taken from the said Registry) are both of his Hand Writing, and are true Copies, taken from the said Registry, kept in the Secretary's Office at New Jersey, he having examined them. the &c. at the End of No 2. excepted; The Reason of that being there is, because he was ordered by the Defendant's Council to copy no more of the said Deed. That this Deponent acts for one Mr. Home, who is Deputy Secretary of New Jersey, and this Deponent has the Care and Keeping of the Books, Papers and Records kept in the said Secretary's Office.

I don't know whether No. 1 is the first Grant in 1663, or the second Grant in 1674, which was made of New York, to the Duke of York; but we have proved both of them from the Chappel of the Rolls here.

As to No. 2. which is plainly the Duke's Grant of New-Jersey, I know there was such a Grant, but don't know the Contents, and as the Defendant's Council have garbled it, and ordered the taking a Copy of a Part only of it, we desire that Part may not be read.

Colonel Robert King, of Maryland, aged 51, [Lib. G. fol. 319. Int. 16. fol. 320.]

Has lookt upon a Paper Writing markt No. 7. and endorsed

(Extracts out of the Registry Books kept by James Weedon, and Francis Jenkins, Surveyors of Land on the Sea-side and Delaware Bay) and that they are true Copys, taken from a Book of Certificates, which belonged to Colonel Francis Jenkins deceased, who, in his Life-time, was Surveyor of Somerset County from 1671 to about 1680, as this Deponent has heard; [Note, This Deponent was not born until 1689] and that the Entrys, of which the said Papers purport to be Copies, which are signed by the Name of Jenkins, he believes to be made in the Books, by the said Jenkins, whose Hand-writing the Deponent was well acquainted with, having lived with him several Years. And that the rest of the Entrys, of which the said Papers purport to be Copys, he has heard, were made by one James Weedon, who was a Surveyor, as he has also heard, but was not acquainted with Weedon, or his Hand-writing. And he believes the said Entries, so made by the said Jenkins, was made as Surveyor of the County aforesaid, [that is Somerset County in Maryland] and that, by the Descriptions of the Lands in the said Entries mentioned, he supposes, some of the said Lands to lye about the Whorekills, and the rest to lye between Delaware Bay and Indian River, and that the said Jenkins was the first Person this Deponent saw possess of the said Book, who continued possess of the same till his Death; and that after his Death, it remain'd some time, in Possession of Jenkins's Widow, from whom this Deponent received the said Book, and he has compared and examined the said Paper Writing, by the Original Papers whereof they purport to be Copies with three Persons, within the Space of four or five Months last past.

This is a most strange Deposition. He has heard that Jenkins and Weedon were Surveyors, but does not say that he believes it; and these Entrys or Papers have been in a private Person's Hands, and he supposes they relate to Lands in such and such Places.

We beg that not a Paper of these may be read, these were made where the Order of Council of 1638 was.

Griffith Beddoe, of Maryland, [Lib. G. fol. 18. Int. 11. fol. 23.]

Has lookt on the Exhibit No. 4. purporting to be Extracts or Copies of several Grants or Patents of Lands, recorded in the Land Record Books of Maryland, and they are true and exact Copies of what they purport to be Copys of, out of the Land Record Books of Maryland, and he examin'd them, with the said Record Books, a few Days before he was examined: says the said Record Books are kept in the Land Office in the State house of Maryland, and that the Entrys of the said Patents, in the said Record Books, appear to be fair and regular, and to

be done, at the times they ought to have been enter'd and recorded according to Usage and Practice of Maryland.

This is a very suspicious piece of Evidence; the Witness does not venture to say that he believes they were fairly entered at any such times; only that they appear to be fair, and to be done at such times as by the Usage and Practice there they ought to be done.

And we remember that they make Returns of Surveys there, without seeing the Land, and so they may make Entries, according to their Usage, without seeing the Grants.

Griffith Beddoe, of Maryland, aged 39, [Lib. G. fol. 18. Int. 10. fol. 19.]

Is acquainted with the usual Method of taking up, and patenting Lands in Maryland, which he became acquainted with by being a Clerk in the Land-Office ever since the Year 1727. And the Method has been as follows: The Persons applying for Land, pays the Proprietor's Agent the usual Fine for the Number of Acres he desires, who gives a Receipt, directed to the Chief Clerk in the Land Office, who makes out a Warrant for such a Number of Acres, directed to his Lordship's Surveyor; who, as he shall be directed by the Person who obtains the Warrant, surveys the Quantity of vacant uncultivated Land, in any Part of the Province where it is desired, and returns a Certificate to the Land Office; from whence it is transmitted to the Examiner-General, for Examination; and when the Certificate has past the Examiner's Office a Patent is, in the Land-Office, made out, carried to the Chancellor to be signed, thence, to the Keeper of the Seal, to be sealed. And, after that, the Patent and Certificate recorded in the Land-Office. That the Place, where cultivated, vacant Lands are desired to be taken up, have, always, been particularly described, in special Warrants, since he has been a Clerk in the said Office. That the Persons obtaining common Warrants have been at liberty to take up vacant uncultivated Land, in any Part of the Province, within 6 Months after the Date. And that all Warrants, be they special or common, if they are not executed in 6 Months from their Date, are of no force, unless renewed before the 6 Months expire. That all Warrants, that issue out of the Land-Office, are assignable, from one Person to another; That all Patents for Lands were granted under the Great Seal of the Province. And the Estate granted, a Fee Simple.

A great deal of Ceremony, to no manner of Purpose; for they have confest that these Returns of Surveys are often made without so much as a View of the Spot certified to be surveyed.

Besides this Witness does not pretend that this was, heretofore, the usual Method of making Grants in Maryland. And my Lord in His own Answer, fol. 291. says, that this Method of vacating Warrants, if not made use of, has been in Use for 15 Years before his Answer, that is, from 1722.

John Ross, of Maryland, aged 44, [Lib. G. fol. 303. Int. 9. fol. 305.]

Is acquainted, and conversant in, the Council Books, of Maryland, having been appointed Chief Clerk of the Council there in 1728, and continued so ever since. Says the Paper-Writings markt No 3. (endorst Extracts of Copies from the Council-Books of the Province of Maryland) are true Copies from the said Council Books, and were copied by himself and another within five Months past, compared and examined the same, by the Originals of which they purport to be Copies, and that the Council Books[he does not say the said] are kept at the Council Office, at Annapolis. And that the Articles in the Council Books, of which the Exhibit aforesaid purports to be Copies, appear to be fairly made, and, as he believes, were done at the time the several Matters by the said Dates of such Entries, are supposed to have been transacted.

We don't know what these relate to, but suppose they relate chiefly to Colonel Talbot's Loghouse or Fort set up in 1683. But don't care to admit these, for fear of some foul Play in them. Nor are the Books of the Minutes of Lord Baltimore's Council, Records; nor ventured to be called so; wherefore hope they shall not be read.

James Boyden, of Philadelphia, Merchant, the Defendant's Witness, aged 30, [Lib. H. fol. 100. Int. 2. additional fol. 101.]

Has lookt upon the Paper-Writings markt No. 5. and says that the Extracts and Copies therein contained, he believes to be true Copies of what they purport to be Copies, having been examined by this Deponent, and the Deputy Secretary of New-York, this Deponent reading the Original Records, while the Deputy Secretary lookt over the said Extracts and Copies, and corrected them according to the said Originals.

NOTE—We have too much Reason to fear every thing which comes from the Defendant and as to Extracts, they can't be read; nor are these Copies. I think, duly proved, the Witness read the Originals only to the other Person.

William Ghiselin, of Maryland, aged 36, [Lib. G. Fol. 249. Int. 19. add. Fol. 249.]

That the Parchment-Writing markt No. 9. purporting to be Letters Testimonial of several Copys, or Extracts, from the

Records in the Secretary's Office in New York, and he examined and compared the same in the Fort at New York, with the Deputy Secretary there, by the original Record Books, of which the same purport to be Copys or Extracts, and the same are true Copys, or Extracts from the original Record-Books.

I believe this Parchment Writing is really a Paper Writing; but no Copys from New York will hurt us. What his Extracts are, I don't know; and if they are Extracts, or Abstracts they are not Evidence.

10.

The Defendant wanted to know, who were the first Discoverers, who were the first Settlers, and what were the first Names, of the three Lower Counties; in order whereto he examined two of his own Witnesses, viz.

Charles Hillyard, of Kent County, aged 63, [Lib. G. Fol. 158. Int. 3 and 4. Fol 160.]

Does not know who were the Persons, that first discovered the three Lower Counties; and the first Name he heard the said Counties called by, was the Territories of Pensilvania; and hath since been called the Counties of Newcastle, Kent and Sussex upon Delaware. And that they have been generally, so called, by all the Inhabitants of the three Lower Counties, and some of the People of Maryland, with whom he has occasionally conversed upon that Subject. That he understands the Lower Counties to be distinct, both from the Provinces of Pensilvania and Maryland.

The same, [Int. 4. fol. 162.]

Has heard the first Christian Inhabitants and Settlers of the three Lower Counties. were Swedes; and that they were, afterwards, settled by the Dutch; and that some Parts of Newcastle County and Sussex County, were first settled; the Settlement made in Sussex County was, then, called the Whorekills. That the Swedes and Dutch, where they settled, made Plantations, as he has been informed by one William Clerk, Receiver of Rents, and Surveyor for William Penn Esq; and several other Persons.

John Holliday, of Kent County, aged 39. [Lib. G. fol. 170. Int. 3. fol. 172.]

He never heard them called by any other Name than Newcastle, Kent and Sussex, or the three Lower Counties. He does not understand that they are within either of the Provinces of Pensilvania or Maryland, but under a separate Government, and distinct from each. But has heard that the said Countties

have been claimed by the Proprietors of Pensilvania: and also by the Proprietor of Maryland; and that the same Person who exercised the Acts of Government in Pensilvania, has, ever since this Affirmant's arrival exercised the Acts or Powers of Government in the said three Counties.

11.

The Defendant's own Witnesses not coming out to his liking, he next cross-examined the nine following of our Witnessess to prove that the new Cape Hinlopen lies opposite to Cape May.

Thomas James, of Philadelphia, Pilot, aged 49, [Lib. H. fol. 12. Int. 2. fol. 13.]

Was born in Pensilvania, and has resided in, and near, it ever since. He knows the Places called Cape May, Cape Henlopen, and the Whorekills, which last is generally now called Lewes. Has known the same above 28 Years. That Cape May, and the Cape now called Hinlopen, lye opposite to each other, and make the Mouth of Delaware Bay.

Elizabeth Morris, Widow, aged 65, [Lib. H. fol. 26. Int. 2. fol. 27.]

Lived from her infancy till she was above 20, in Sussex County, and the residue of her time in Philadelphia. Has seen Cape May, and the Cape opposite to it, at the Whorekills, which bore the Name of the Whorekill Cape, and Cape Hinlopen, as she believes—Has known the aforesaid Places 55 Years. That they have been reputed to be the Capes of Delaware.

Samuel Hollingsworth, Farmer, aged 67, [Lib. H. fol. 29. Int. 2. fol. 30.]

Came into America in 1682, lived in Newcastle County from thence to 1701, and has resided ever since in Chester County in Pensilvania.

John Musgrave, Farmer, aged 73, [Lib. H. fol. 34. Int. 2. fol. 35.]

Has lived ever since 1682 in Pensilvania and one of the three Lower Counties.

Samuel Preston, Esq., aged 75, [Lib. H. Fol. 104. Int. 2. fol. 105.]

Has lived in Maryland, the three Lower Counties and in Pensilvania, from his birth to this time. Has known Cape May, Cape Hinlopen and the Whorekills above 50 Years. That Cape May and Cape Inlopen from [it should be from] the Mouth of Delaware Bay, and have, always, since he knew them, been reputed to do so; and are opposite to each other. That the said Cape Inlopen is near to the Town now called Lewes, but formerly the Whorekills,

John Rambo, of New Jersey, Farmer, aged 79, [Lib. H. fol. 19. Int. 2. fol. 20.]

Was born in the Place now called Pensilvania, near where the City of Philadelphia now stands; where he resided for above the first 20 Years of his Life, and since resided in the Jerseys. Knows Cape May and Cape Hinlopen, which lyes opposite to Cape May, and a Place called the Whorekills. That he was there a Whaling about 50 Years ago, and has never been there, at any other time. That they have been reputed to be the Capes of Delaware. That they have, as he has heard, been so reputed, ever since the first Discovery of those Parts—and that the Mouth or Entrance of Delaware Bay lyes between the said Capes.

Joseph Wood, Carpenter, aged 81, [Lib. H. fol. 4. Int. 2. fol. 4.]

Has lived in America about 62 Years—soon after his arrival there he settled under the Government of Sir Edmund Andros, who was then Governor of New York under the Duke of York, on the West side of Delaware, near the Falls, and has generally resided on the same Place ever since he settled it.

John Teague, of Maryland, Planter, aged 85, [Lib. H. fol. 43. Int. 2. fol. 44.]

Was born in Virginia, and has lived from his Infancy in Somerset County in Maryland. Does not know Cape May, but has known the Whorekills, and the Land from Phenix's Island to the Whorekills Town, for above 50 Years. And that the said Land has been called by the Name of Inlope, for the said Time.

Thank him for this, very kindly.

William Peterson, of New Jersey, Furmer, aged 92, [Lib. H. fol. 7. Int. 2. fol. 8.]

Came into America about 82 Years ago [1658] and lived, for 20 Years next following, in Christiana Creek, and then removed into the Jerseys, and there has resided ever since. That, at the time he settled at Christiana, the Dutch were possess'd of that Part of the Country and were, afterwards, dispossess'd by the English under Captain Carr. That, some time after that, the Dutch again took, and possess'd it, till an Exchange, as he has heard, was made between the English and Dutch, of Surinam for that and other Places. That he knows Cape May and the Whorekills, but does not know of any Cape called Henlopen. That he has known Cape May and the Whorekills about 70 Years, and that they have been deemed and taken to make the Entrance or Mouth of Delaware Bay.

Exceedingly material in this Old Witness, he never heard of Cape Hinlopen up at the Whorekills, tho' he knew it

70 Years. This shews that it is a new Name given to that Upper Cape.

And this is what the Defendant has got, upon his Cross Examining our nine old Witnesses to this Point.

12.

The Defendant next examined three other Witnesses, of his own, to prove what Settlements were made, and under what Government, near and about Philadelphia, before the Year 1680.

George Fitzwater, aged 66, [Lib. H. fol. 85. Int. 12. fol. 87.]

Has heard and believes that several Swedish Settlements were made, near the Place where Philadelphia stands, before the Year 1680, and to the Northward of it about ten Miles, and to the Southward of it, as far as, or near to, Chester. Says he believes such Settlers had Grants from the Governor of New York; but can't say who appointed such Governor.

Benjamin Banckson, aged 71, [Lib. H. fol. 83. Int. 12. fol. 84.]

Says that, before the Year 1680, and he believes before he was born (which must be before 1669) several People were settled, near to the Place now called Philadelphia, both to the Northward and Southward. Farther says, he has heard from his Mother, and believes, that she was born at the Place called Kingcess.

Richard Buffington, aged 85, [Lib. H. fol. 88. Int. 12. fol. 90.]

Says that, before the Year 1680, there were some Settlements made upon Delaware, from the Falls thereof, downwards to the Whorekill Town, by English, Swedes, Dutch and Finlanders. That this Deponent was, about Sixty Years ago, [1680] at the said Whorekill Town, that is now called Lewes; which then seemed to be an old Town, and to have been a great while settled. That the People, who were so settled upon Delaware, took their Grant from a Governor of New York, under the Duke of York. And that Courts were held, at the Town of Upland, now called Chester, under the Government of the Duke of York, and his Governor at New York.

One would think the Defendant was labouring to prove our Case for us. And

This shews the Reason why we took, from the Duke of York. his Release even as to the Province of Pensilvania it self; he having a great Number of Tenants settled there, under his Government of New York.

But the Defendant, not being yet satisfied, he went on, and cross examined four of our ancient Witnesses, to the same Points, and burns his Fingers again.

William Peterson, of New Jersey, aged 92, [Lib. H. fol. 7. Int. 9. fol. 11.]

Says that, when he came into America (which in Answer to the second Interrogatory, he says was in 1658) there were some Swedes settled, on the Place where Philadelphia is built, both above and below it; and that there was a Fort, about 5 Miles below, on an Island in the Mouth of Skuylkill River, originally built by the Swedes, but then in the Possession of the Dutch, who were likewise possest of all the Country thereabouts.

So here is another Swedish and Dutch Fort at Skuylkill.

Joseph Wood, aged 81, [Lib. H. fol. 4. Int. 9. fol. 6.]

Says that, when he first came into America, (which in Answer to the second Interrogatory, he says was in the Year 1678) there were but three Inhabitants, near about the Place where Philadelphia now stands; and that one of them was a Finlander, who was settled about a Mile above the Place where Philadelphia now is; and the other two, Swedes, named William and Swan Swanson, who were settled about a Mile below where the said Town now is. That he does not know under what Government the said Persons settled originally; but heard, that they were at the time of the Deponent's Arrival, under the Government of New York.

John Rambo, of New Jersey, aged 79, [Lib. H. fol. 19. Int. 9. fol. 23.]

Says that there were several Settlements, made, before the Year 1680, near about the Place where Philadelphia now is, both to the Northward and Southward of the same, by Swedes, Dutch and English, under the Authority of the Swedes and Dutch, respectively, and afterwards under that of the English.

John Musgrave, aged 73, [Lib. H. fol. 34. Int. 9. fol. 38.]

Has heard that, before the Year 1680, there were many Settlements made, by the Swedes and Dutch, under the Government of the Dutch, above, below, or near, the Place where now Philadelphia stands.

13.

The Defendant went on, and examined another of our Witnesses, to prove how the Whorekills had been settled, and under whom.

John Teague, of Maryland, our Witness, cross-examined, aged 85, [Lib. H. fol. 43. Int. 6. add. fol. 46.]

Has known the Whorekills Town, upwards of 50 Years; does not know how many Families there were, in the said Town, when he was first acquainted with it, but believes there were

about 5 or 6 Families. That he is unacquainted what Number of People were settled in the Country about it. And that the People, in and about the said Town, as he has heard, were, at his first Knowledge of them, under the Government of William Penn Esq;

So the Defendant had enough of this, and examined no more Witnesses thereto.

14.

The Defendant wanted to prove a Susquehanna Fort, situated a great way North, up in the Country, about the River Susquehanna; and in order thereto, examined the 7 following Witnesses, of his own, viz.

Paul Poulson, of Maryland, aged 53, [Lib. G. fol. 124. Int. 6. add. fo. 124.]

Has heard, from several ancient People, there was a Fort, upon the River Susquehanna, at a place called Conejocula, upon the West side of the said River, and that he supposes it was built by the Indians.

Thomas Hitchcock, of Maryland, aged 58, [Lib. G. fol. 77. Int. 6. add. fol. 78.]

Has heard his Father and several other ancient Persons say, that there was a Fort, on the River Susquehannah, but where, or by whom maintained, he knows not.

**Ann Holy, of Maryland, aged 60, [Lib. G. fol. 103. Int. 6. add. fol. 105.]*

Has heard of a Fort, at Susquehannah, many Years ago; but by whom built, or where situated, she has never heard, till about a Week since from her Husband; who told her that it was a great way up Susquehanna River, and above Conestoga; and that she, many Years ago, heard one Captain Hill lost his Hand at the said Fort.

George Veasey, of Maryland, aged 61, [Lib. G. fol. 82. Int. 6. add. fol. 54.]

Heard one Major Kelton say that he was one of the Soldiers that attackt an Indian Fort in the Night, and that there were several Men killed in besieging the said Fort; but where the said Fort was situated, or the time when this happened, knows not; but believes it was some Years before he was born. [That must be some Years before 1679 then.]

William Price, of Maryland, aged 66, [Lib. G. fol. 59. Int. 6. add. fol. 60.]

Has heard a general Rumour that there was a Fort on Sus-

quehanna, built against the Indians, but where situated, or by whom built, does not remember to have heard.

Patrick Maugher, of Maryland. aged 67, [Lib. G. fol. 117. Int. 6. add. fol. 118.]

Says that, when he was a Servant. in Governor Nicholson's Time, he heard there was a Fort, that stood upon Susquehanna, built by the Mingo, or Susquehanna Indians. That he has heard it was attacked and taken by one Colonel Ninian Bell, and the Indians there were slaughtered. That he was told, by one William Cannon, now living, that the said Indian Fort stood upon a Part of the Plantation whereon he the said William Cannon now lives at Conejocula. That he was also told by one Philip Roper, that the said Roper was wounded, at the taking of the said Fort, by an Indian Arrow, in his Leg, and the Deponent has seen the Wound aforesaid. And that the Deponent was told that 150 Christians were killed at the taking of the said Fort. And the Deponent has also heard that the said Colonel Beale went to attack and take the said Fort by the command of the Honourable Francis Nicholson, then Governor of Maryland. [This must be since 1694, so that the Witnesses widely disagree.]

NOTE—It appears, by the Maryland Book of Laws, proved in the Cause, at Fol. 3. that Francis Nicholson was Governour in September, 1694; and it appears at Fol. 7. of the same Book, that he was the King and Queen's Governour; so that, wherever this Fort was, if it was attackt, it was so attackt by Governour Nicholson, as the Crown's Governour of Maryland, not the Proprietor's Governour; Maryland Government being taken into the hands of the Crown before 1694, and continued so till 1716, as appears manifestly from the enacting Style of every one of their Laws during that Space of Time.

John Fleaharty, of Maryland, aged 102.

Has heard that the Lord Baltimore did begin, or intend, to build a Fort at Conestogo, or Susquehanna.

We did not offer to examine any one of the last seven Witnesses. Indeed they prove nothing. Every Word is Hearsay. And if there was a Fort up, at Conejocula, yet they should shew that that was the Susquehanna Fort, and that it was ever known or heard of in 1680, in order to apply this to any thing for their purpose. Whereas our Evidence destroys any thing like that.

But the Defendant went on, and cross-examined one of our Witnesses, viz.

Samuel Preston, aged 75, one of our Witnesses, cross-examined, [Lib. H. fol. 104. Int. 2. add. fol. 104.]

Remembers when he was a Boy to have heard, that the Sus-

quehanna Indians, near the River Susquehanna, as he believes, built a Fort, which was attackt, and taken, by some People from Maryland, under the Command of one Colonel Bell; but how far the said Fort was from the Mouth of the said River, knows not. Says, that, when he first heard of the said Fort, he was so young that he has but a faint Remembrance of a Rumour about it. But further says, that, above 20 Years ago, he rode over the River Susquehannah, above Conestogo Town, with Samuel Carpenter and Joseph Wood, and, about a Mile from the said River, on the West Side thereof, saw a Field, with an Apple-Tree in it. and was told (by Joseph Wood, he believes) that, according to the Description of one Garland, an Indian Trader. he the said Wood believed, that was the Place where the Susquehannah Indians fortified themselves in, when they were pursued by Colonel Bell from Maryland; but says, he believes the said Wood knew nothing more of the Place than by Hearsay, [Note, Joseph Wood is examined in the Cause himself, by both Sides] Has heard, and believes, that the Susquehannah Indians aforesaid, had killed some People. upon Patapsco in Maryland, [Note, That's down very low in Maryland] and, to secure themselves, built the Fort as aforesaid; and that the before-mentioned Colonel Bell, with some Men from Maryland, pursued them, besieged their said Fort, and obstructed their receiving any Provision into it, by which means the Indians were obliged to leave it, and by Force rusht thro' the said Bell's Men.

The Same, [Int. 21. add. fol. 115.]

Has never heard of any other Fort on the West Side of Susquehanna; and says, the Place, shewn to him by Joseph Wood, is a little farther North than the Place in the printed Plan called Conestogo.

If the Defendant can possibly make any Use of this Deposition, and would imagine this to have been a Susquehannah Fort. and to have been a Fort really situated at Conestogo, upon this hearsay Story at 3d or 4th Hand yet, such Fort appears, by the latter Part of the Deposition, not to have been any abiding settled Fort, such as was mentioned in the Orders of Council in 1680, but a sudden extempore Fort, run up, just when the Indians had (down in the very Body of Maryland) murdered the Persons, to defend themselves against Colonel Bell, and those who were then pursuing them for that Murder.

You will please to remember, that, tho' the Orders of Council about 1680, talk of the Susquehanna Fort, yet, Mr. Penn's Charter for Pensilvania, contains no such Limitation or Restriction to that Fort.

And indeed, if you cast your Eye upon my Lord Baltimore's Plan, or upon the general Plan, you'll see what a Sort of a Peninsula would be formed, if he was to go up above Conestogo.

And most certainly, the Susquehanna Indians, who were a great Tribe, might have different Forts, and at different times; so that no particular Fort can be applied to that Order, if the Place of this Fort had been proved or fixed.

And, if we believe my Lord Baltimore's own Book and Account of his Province, publisht in 1635, after he had actually made his Settlement, (for he gives an Account therein of his Landing, of his Settlement, and of the whoie Country) He tells us, in so many plain Words, at Fol. 7. That the Susquehannocks, a warlike People, that inhabit between Chesopeak Bay and Delaware Bay. had drove the Indians of Yocomaco higher up into the Country. And that Seituation of the Susquehannocks does not at all agree with Conestogo, which lies up a great way North of every Part of Maryland.

So that the Susquehannocks had no Fort, up so many Miles in the Country, nor, had any Christian ever been up so high as Conestogo, in long after 1680, as our Witnesses have proved.

15.

Charles Brockden, the Defendant's own Witness, [Lib. H. fol. 102. Int. 17. fol. 102.]

Has lookt on the Paper Writing, No 3. (endorst William Penn to William Standley, Release for 500 Acres in Pensilvania) That the Name, C. Brockden, is of his Hand-writing, and he is Deputy Master of the Rolls for Pensilvania, and Recorder of Deeds for the City and County of Phildelphia, and has the Keeping of the Records of Deeds in the said City and County; and says, the Exhibit is a true Copy of what it purports to be a Copy of, taken from the Records in his Custody as Recorder.

So that this last Proof will clear all Objections, when we cross-examined this same Witness to prove several other Records in his Office for us.

Benjamin Eastburn, our Witness cross-examined, [Lib. H. fol. 117. Int. 24. add. fol. 122.]

Has lookt upon the same Exhibit, which he calls a Release for 5000 Acres. And has heard, that, about, or, before, the first Settlement of the Province of Pensilvania under Mr. Penn, he made Deeds or Grants, for very large Quantities of Land, in the said Province, to several Persons; but the particular Quan-

tities, does not remember. Further says, he believes that the said Deeds, or Grants, and the Considerations and Terms were much the same, as those in the said Exhibit, except what relates to the Indians; and as to that, he can't charge his Memory. Further says, that he has seen a Copy of the Concessions, or Constitution, referred to in the said Exhibit; And that it contained particular Terms, about Lots in and near Philadelphia, and the Settlement of the said Lands; also, other things, which he can't particularly remember.

Charles Brockden, the Defendant's Witness, [Lib. H. fol. 102. Int. 1. add. fol. 103.]

Has lookt upon the Paper Writing, markt No 4. (endorst a Copy of the Frame of Government of the Province of Pensilvania, and Territories thereunto annext, or, William Penn's Charter to the People of the said Province and Territories thereunto annext,) And has examined and compared the same, with the Record, from whence it's described, and that it is a true Copy thereof.

We don't know what the above Release to Standley is, or what Use is designed to be made of it; I suppose, to shew that Mr. Penn sold out some few Lands, upon very cheap Considerations, as soon as he had his Grant of Pensilvania, in order to tempt Persons to go over and begin his first Settlement; for that he most certainly did.

16.

Benjamin Eastburn, our Witness, cross-examined, [Lib. H. fol. 117. Int. 19. add. fol. 121.]

Does not certainly know, but has heard, and believes, that the Town of Newcastle lies very near 20 Miles South of Philadelphia.

John Taylor, the Defendant's own Witness, [Lib. H. fol. 95. Int. 15. fol. 95.]

Says, he, by Direction of the Plaintiff Thomas Penn, did measure how far the Town of Newcastle lies South, of the City of Philadelphia, and found it to be about 18 English Statute Miles.

NOTE—He does not say when he measured this; and the Defendant, in his Interrogatory, Lib. H. fol. 157. studiously, and on purpose, avoids to ask as to the Time when? If he would now fancy that this was before the Agreement, Numbers of our Witnesses prove, that Mr. Thomas Penn was never in America, till after the Agreement executed.

And the Defendant's Surveyor Hynson Wright, swears he surveyed all the lower Counties, to see where the Tangent Line would fall.

17.

John Taylor, the Defendant's own Witness, [Lib. H. fol. 95. Int. 16. fol. 96.]

Has never heard that any other Line, 12 Miles distant from Newcastle, has been run, by Order of the Plaintiff's Aneestors, or themselves, than one, to mark part of a Circle of 12 Miles Radius from the Town of Newcastle, and separate the County of Newcastle from Chester County in Pensilvania. And further says, That several Parcels of Land, lying South of the Parallel of the most Northern Part of the said Circle, are held under the Plaintiffs, as within the Province of Pensilvania, by Grants made about and since the Year 1683. Some of which Lands, the Affirmant says, he believes extends South of the Parallel aforesaid about 6 or 8 Miles, and are extended Westwards, from the County of Newcastle, to the River Susquehannah. Further says, he cannot judge what Quantity there may be settled as aforesaid, or the Number of Persons they are held by; but knows that several Townships, and a great Number of Inhabitants, are so settled as aforesaid.

Samuel Preston, our Witness, but cross-examined, [Lib. H. fol. 104. Int. 12. add. fol. 114.]

That all the Grants made by the Plaintiffs, in the 3 iower Counties, are to the Southward of a Line, drawn West from Delaware, 12 Miles North of Newcastle Town.

18.

The Defendant examined the following Witness, in order to prove an Isthmus somewhere.

William Rumsey, of Maryland, the Defendant's Witness, aged 42, [Lib. G. fol. 129. Int. 1. add. fol. 137.]

Is well acquainted with Christiana Creek and some of the Branches thereof. And also is acquainted with Elk River, and most of the Branches thereof. Has seen the Mouths of both Christiana Creek and Elk River. That Christiana Creek runs into, and flows out of, Delaware Bay or River; and Elk River runs into, and flows out of, Chesopeak Bay. That Christiana Creek runs through Part of Newcastle County. And the Branches of Elk River run up thro' Cecil County, into Chester County, in the Government of Pensilvania. That the small Branches, a little below the Springs, of the said River and Creek, do approach, within a Quarter of a Mile of one another, but believes they do not interlock. Is acquainted with, and assisted, as a Surveyor, in running that Part of the East and West Line,

lately run by his Majesty's Order in Council, between Delaware and Susquehanna; and he believes that the Mouth of Christiana Creek lies about three Miles to the Northward of the said East and West Line.

NOTE—This Map stands single, and alone by himself. They have not been pleased to prove any Map on their Part; not even of this Line which, this Man says, he assisted to run. Nor is he so kind as to tell us whereabouts these same small branches are, which at the Spring Heads, approach so near: All he says, is, that the Mouth, of one of those Rivers, is, as he believes, about 3 Miles North of the East and West Line which he assisted to run. He is mistaken in that Fact, as appears by our Map. But, if that was true, what consequence does it carry? The Mouth of a River, especially in America, (where their Creeks are larger than any Rivers we are here acquainted with) may be 3 Miles North of a Place, and the Head, at the first Spring may be 30, or many more Miles South of it. He certainly intends that the Branches or First Springs are still more North, but then he should have said it, which he does not. And if so, they are a great way up within the main Continent; And, for Proof thereof, this very Deposition, and my Lord's own Answer, will serve us, as well also as our Map. For he tells us, that Christiana Creek runs thro' Part of Newcastle County, and my Lord confesses in Folio 13. of his Answer, that the three lower Counties (of which all the Witnesses agree that Newcastle is the most Northern) are scituate on the Eastern side of the Peninsula, and also, above the Peninsula within the main Land or Continent. So that this Person would have the Isthmus of the Peninsula, (which they mean to use this Evidence for) lay a vast Number of Miles up within the main Continent; whereas we, have proved, by many Witnesses, not only the true Isthmus, at the Head of the Peninsula, formed by the Tide-Waters approaching so near to each other as to flow within 4 Miles, from Apoquinemy to Bohemia; We have proved, by many more Witnesses, another Isthmus, a little more North than our first, being 22 Miles asunder, and formed by the very Head of the great Bay of Chesopeak and great River of Delaware themselves; we have proved, by many Witnesses, that, within the Peninsula itself, there are many Rivers that interlock. And we have, additionally proved that, within the Peninsula itself, there are several Rivers which rise from one and the same Head, and run, both ways, quite across the Peninsula, from Chesopeak Bay to Delaware Bay or River. And we rely on it that the Heads of such small Branches, as this Witness speaks of, where the Run of Water is but like a Straw, perchance a great deal

less, could not be in Contemplation, nor can possibly, in the Nature of the Thing, from the Isthmus to this Peninsula, which, in all the other Parts of it, is surrounded by the vast Atlantick Ocean, and by the great Bays of Chesopeak and Delaware; but the plain natural Shape of the Land, and the Approach of the flowing Tide-waters, on each Side, or, at most, the Approach of the Bay of Chesopeak, and River of Delaware, to each other, is what forms the Isthmus.

19.

The Defendant wanted to know further, whether the Mouth of Christiana Creek or River lay to the South, or to the North, of the Line lately run by Order of the King in Council; and, in order thereto, cross-examined 4 of our Witnesses.

Samuel Hollingsworth, [*Lib. H. fol. 29. Int. 7. fol. 33.*] *John Musgrave*, [*Lib. H. fol. 34. Int. 7. fol. 37.*]

Knew nothing at all of the Line.

Samuel Preston, [*Lib. H. fol. 104. Int. 7. fol. 108.*]

Was acquainted with the Mouth of Christiana Creek, but was unacquainted with the Line.

Benjamin Eastburn, [*Lib. H. fol. 117. Int. 7. fol. 117.*]

Is acquainted with Christiana River, in Newcastle County, and also with the Line, lately run by Order of the King in Council, between the Proprietors of Maryland and Pensilvania; but the said Line being begun, to the Westward of Newcastle County, can't say whether that Line is to the Northward, or Southward, of the Mouth of the said Christiana River.

20.

The Defendant examined Three of his own Witnesses, to prove where some Places called Kingess, Mill Creek, Charges Creek, or Westerhock lay; who wonderfully disagree therein.

Mordecai Howell, [*Lib. H. fol. 54. Int. 7. fol. 57.*]

Knows a Place called Kingess, and it lies about a Mile and half or two Miles to the Southward of Philadelphia.

George Fitzwater, [*Lib. H. fol. 85. Int. 7. fol. 86.*]

Has heard that a Piece of Land, lying about six Miles below Philadelphia, and on or near Skunkkill River, is called Kingess.

Benjamin Banckson, [Lib. H. fol. 83. Int. 7. fol. 84.]

Knows the Places formerly called Kingess, Mill Creek, Charges Creek, or Westerhook. That Kingess is about seven or eight Miles below Philadelphia, and on a Creek falling into Skuykill River. That Mill Creek and Westerhook are about the same Distance from Philadelphia, and about a Mile from each other.

So that the Kingess is either 1 Mile and $\frac{1}{2}$, or 8 Miles, below Philadelphia.

And Millcreek and Westerhook are about 7 or 8 Miles from Philadelphia, some way or other.

21.

William Price, of Maryland, aged 66, the Defendant's own Witness only, [Lib. G. fol. 59. last Interrogatory fol. 63.]

That he being at Marcus Hook on Delaware, about forty Years ago, [that must be 1700,] several People, who then lived at Marcus Hook, informed this Deponent, that there was a bounded Tree there, called my Lord's bounded Tree; and that Marcus Hook aforesaid, as Deponent has heard and believes, is about 16 Miles up the River Delaware, above Newcastle Town.

The above are the very Words of the Witness: what Lord he, or his Informers, meant, whether they meant Lord Delaware, who went up, and gave his Name to, that River Delaware, or any other Lord, Does not appear from this hearsay Evidence. And it's observable, that the Defendant has examined 71 Witnesses of his own, from the Age of 102 downwards, and cross-examined 27 of ours; and we have examined 70 Witnesses of our own, and cross-examined 10 of his: and yet, not a Syllable of any such bounded Tree, is mentioned, by any one but this single Man; and that too, in answer to the last general Interrogatory, whether he knew any thing more for the Benefit of the Defendant?

22.

The Defendant examined two Witnesses of his own, to prove that his Ancestor in 1682, went up Delaware to Chester, in order to make an Observation, and how he was received there by the People: and that, in going back, at Marcus Hook, &c. he forewarned a few Inhabitants from paying any more Quit Rent to Mr. Penn.

James Widdouas, aged 76, Defendant's own Witness only, [Lib. H. fol. 77. Int. 10. fol. 77.]

Has lived in Chester County ever since 1681. That in 1682, the

Lord Baltimore came, out of Maryland, to the Head of Apoquimomy, and from thence, up Delaware, as high as a Place then called Upland, and now called Chester, accompanied by several Gentlemen, who came in two Boats. He has heard from Persons then present, and believes, that the Lord Baltimore then declared that he intended to go higher up the River, and had got instruments with him, in order to see how far his Dominion reached, but, that he was stopt by the People who lived thereabouts, who were Swedes, Dutch and English, who brought out Guns and Staves against him. Does not know who the People were, that accompanied the Lord Baltimore; but has heard and believes that one of them was a Captain of a Man of War. That he landed at the House of one Robert Wade, on the Southwest Side of Chester Creek, and to the best of Deponent's Remembrance, continued there, for about two or three Days, with Governour Markham, then Governour of Pensilvania. That he had been credibly informed from Persons, who said they had been present at the same Time, that the Lord Baltimore caused an Instrument to be set up to know how far his Government extended? And that it was then agreed, by the Artist there present, that it reached to the Place where Philadelphia now stands, which Land, at that time, was possess'd by Swedes under the Government of York, and not then bought of them by William Penn Esq;

The same, to the 11th Interrogatory, fol. 81.

That when Lord Baltimore left Chester Creek aforesaid, on his Return, he called at the House of James Brown, at Marcus Hook, a small Town, now called Chichester, about 4 Miles below Chester Creek, where the Deponent then lived: and desired this Deponent to tell the said Brown (who was then from home) that he lived upon the said Lord Baltimore's Land, and that if he paid any more Quit-Rents to Mr. Penn he would be to pay them over again; for it was his Land, and he would have his Right. And the Deponent was informed, that he went to every House, on the Waterside, and in like manner forewarned the Inhabitants not to pay any more Quit-Rents to Mr. Penn.

The same, to the last Interrogatory, fol. 83.]

Has heard and believes that Lord Baltimore, about the same time, caused a Fort to be built, upon or near to Christine Creek, but this Deponent has never seen the same, nor can give any particular Account thereof.

If this single Hearsay Witness (to every thing but James Brown) amounts to any Proof, why then the Defendant was, very early, going by the Degrees, and by the Degrees as then known 50 Years after his Charter; and to th

Extent of that modern discovered Degree; and confessedly (by the present Answer) a great deal above every Part of the Peninsula and truly here was an early, and a very high Claim; but, most unfortunately for him, three Years after this, viz. in 1685, upon his own Petition, the King in Council adjudged, that the three lower Counties were not included in his Charter, and were not granted to him, and consequently, this, that he verbally claimed of James Brown, was not his Land, nor his Right.

Richard Buffington, the Defendant's Witness only, aged 85, [Lib. H. fol. 88. Int. 10. fol. 88.]

Has lived above 63 Years on the West Side of Delaware, in the Place now called Chester County. Near 60 Years ago he heard, from creditable Persons, that the then Lord Baltimore, was at a Place called Marcus Hook, about 4 Miles below, and to the Southward of the Place now called Chester Town. He believes the said Lord Baltimore came from Maryland, and as this Deponent was informed, from the said creditable Persons, forwarned the Inhabitants from paying Quit-Rents to William Penn Esq; and saith [said] that the Land they lived on was, or would be, his.

In this old hearsay Story, there is at least some Mistake in Time; for if Governour Markham, the Governour of Pennsylvania, was along with Lord Baltimore, he was Kinsman to, and Governour under Mr. Penn, and then Pennsylvania was not under the Government of New York. Nay, if there is any Truth in this Story, it must have been after Mr. Penn had the Lower Counties also; for that (as he says, he heard) my Lord forbid some Tenants on the Water-side paying any more Quit-Rents to Mr. Penn.

23.

Mordecai Howell, aged 78, [Lib. II. fol. 54. Int. 5. fol. 54.]

Is the Defendant's own Witness only, and says, that, about 1682, he came up the Bay of Delaware, in Company with the Ship in which the Plaintiffs Father was. That he landed, some time before Mr. Penn, at Newcastle Town, and was there when he landed at the said Town; but knows not how long he stayed there. That some time afterwards, Mr. Penn went to one Sanderlin's, at a Place then called Upland, but now Chester, which is reputed to be about twenty Miles above the Town of Newcastle. That he can't tell how long he stayed there, nor knows for what end or purpose he went there, but has heard it talkt, among the People, that it was with Intent to have built a City there, but that he and Sanderlin could not agree.

It is undoubtedly true, that Mr. Penn, when he landed, found so many ancient Settlers, under Swedish and Dutch Titles, and so many more, under more modern Grants from the Duke of York, that he was at a loss to find a Space, in any proper Seituation, fit for so large a City as he then intended, and afterwards founded, free from some private Rights and Possessions; and at length having pitched upon a proper Seite for it, between two navigable Rivers, he was forced to buy it from the private Proprietors, in order to form his regular City Philadelphia, which is an oblong Square, of two Miles, by one Mile.

**Zeb. Hollingsworth, of Maryland, aged 43, [Lib. G. fol. 64. Int. 10. add. fol. 70.]*

Has several times heard both his Father and Mother declare that the Plaintiffs Father had an Observation taken, in order to fix a Place to build Philadelphia on, by an Artist or Mathematician, at the House of Robert Wade; at the Mouth of Chester Creek, on Delaware. That the said Artist then told Mr. Penn that he was, there, within the Baltimore Grant. That some warm Words past between Mr. Penn and the Artist, which the Deponent has heard was, because Mr. Penn believed the said Artist was mistaken in his Observation. That this Deponent's Father sometimes followed the Business of a Blacksmith, sometimes building Houses, and at other times surveying Lands in both Provinces of Maryland and Pensilvania.

This Witness has before sworn he has a Dispute under a Maryland Right, with a Pensilvanian under a Pensilvania Right. And besides, this is but a Hearsay from his Father and Mother, neither of which does he pretend is dead, and we have never cross-examined this Man.

Andrew Barry, of Maryland, aged 40, [Lib. G. fol. 72. Int. 10. addit. fol. 73.]

That he was desired, as a Magistrate of Cecil County in Maryland, to take the Affirmation of one Lydia Hollingsworth, now deceased. He accordingly did administer an Affirmation, whereon she declared to this Deponent, that, between 50 and 60 Years before that Time, she was at the House of one Robert Wade, at the Mouth of Chester River, on Delaware River; That she was there when the Plaintiffs Father was there with an Artist, taking an Observation. That the said Artist then told the said Penn, that he was within the Lord Baltimore's Grant. And the said Lydia further declared, that the said House, where the said Wade then dwelt, was reputed to be in Maryland. And that, upon the said Artist telling the said Penn as aforesaid, they then went, as she supposed, further up the River Delaware,

and fixt the Town at the Place where the City of Philadelphia is now built. The said Penn. as she supposed, if the Artist had not informed him as aforesaid, intended to have built a Town on. or near to, the said Chester River.

Surely this Man did not administer an Affirmation, and take the Woman's Declaration viva voce. He omits specifying how she declared, but it must be presumed to be in Writing; and if so, the thing itself ought to appear, and not his Account of it only. I suppose there is something in the Affirmation itself, that would hurt them, so it is concealed.

And it's certain the Artist, as he is called, must have been mistaken, to say that Chester Creek was within Maryland, for Chester Creek is above the Northernmost Part of the Lower Counties. consequently, as Part of these Lower Counties is up in the Main Continent, what is above them must be further up in the Main Continent, and could be no Part of a Peninsula.

But his Mistake was, that he was measuring the Degree in 1682 (not as known in 1632) and was going to the Extent of that Degree too.

24.

**Anne Holy, of Maryland, the Defendant's own Witness, aged 60, [Lib. G. fol. 103. Int. 8. addit. fol. 106.]*

When she was a Girl, Lord Baltimore lodged at her Father's House. And she heard that, about that time, an East and West Line was run, by the said Lord Baltimore and others, from the Mouth of Octorara, to Naaman's Creek; and that there was a Line of markt Trees lately to be seen, as she has heard. And further declares, that the Pensilvanians have eneroacht upon her Husband, and taken Lands from him, that were patented to her Husband under Maryland Rights, and that the last Line, run by Order of the King in Council between the two Provinces, run through her Husband's Plantation.

This Woman swears herself interested, and tho' the Defendant began to examine her, to prove this old Line run in 1683, yet, upon second Thoughts, he dropt making any further Proof thereof, on his Part, save what fell occasionally from his Witnesses.

But he made us ample Amends, for he was resolved he would prove the little Loghouse, which he says was built in 1683.

25.

And to that purpose has examined the 14 following of his own Witnesses, and cross-examined two of ours, viz.

Hugh Terry, of Maryland, Defendant's own Witness only, born in 1699, [Lib. G. fol. 39. Int. 5. addit. fol. 40.]

Has heard his Father Thomas Terry say that there was a Fort at Christiana, that was a Charge to the People of Maryland: that it was built by one Talbot, and that one Murray was Captain of the Fort, and that Provisions were prest, to support the People in the Fort. from every Man's House, in the Neighbourhood of the Place where Bohemia Ferry in Cecil County is now kept, except his said Father's.

NOTE WELL.—Allowing this Account to be very true, the Fort carried no Subjection beyond its own mere Contents of fourteen Feet by ten Feet, for they went down into Maryland, to press Provision for it, into Cecil County, and did not pretend to raise or press Provisions for the Fort from the Pennsylvania Tenants in Newcastle County; although several such were then settled between the Fort and Maryland.

**Zeb. Hollingsworth, of Maryland, Defendant's own Witness only, born in 1697, [Lib. G. fol. 64. Last Interrog. fol. 72.]*

Adds, that he has heard there was a Fort kept at Christiana Bridge, in Colonel Talbot's Time, that one Kearsey supplied the said Fort with Provisions, upon Colonel Talbot's Account, but when Talbot left the Province for killing of one Rouseby, there being nobody to pay Kearsey for finding Provisions, the said Fort broke up. But this is an interested Witness, as he himself swears.

**Anne Holy, of Maryland, Defendant's own Witness only, born in 1680, [Lib. G. fol. 103. Int. 5. addit. fol. 104.]*

Has heard there was a Fort kept at Christiana Creek, near where Christiana Bridge now is; but on what Side, by whom built, or at whose Expence, knows not; but believes it was maintained by the Government of Maryland, because the People, in the Fort, used to have Provisions from her Father's House in Maryland. That the said Fort was kept up some time, but how long can't tell; but it was, until the Killing of one Rouseby by Colonel Talbot. That the said Fort lay near West from Newcastle Town, and distant about five Miles thence, as she believes.

Aaron Latham, of Maryland, the Defendant's own Witness only, born in 1680, [Lib. G. fol. 76. Int. 5. addit. fol. 76.]

Knew a Fort that was built near the Place where Christiana Bridge is, and that it was called Talbot's Fort and it stood on the West side of Christiana Creek and heard it was built by one

Colonel Talbot, and was told by the Men in the said Fort, that they were maintained at the Expence of the said Colonel Talbot. That it was about 50 Years ago [1690] that he saw the said Fort, and that he remembers it was kept up about two or three Years. That Newcastle Town lay E. S. E. from the said Fort. That the said Fort was about 5 Miles distant from Newcastle Town.

Thomas Price, of Maryland, the Defendant's own Witness only, born in 1676, [Lib. G. fol. 86. Int. 5. addit. fol. 89.]

That, about 50 Years ago [1690] he saw a little Log-Fort, at the foot of Christiana Bridge and some Men in it. That the said Fort was kept by Colonel Talbot, as he believes, to keep the People of Newcastle off. That the said Fort was on the Westward side of Christiana Bridge, and kept up five or six Years, and lay, as he believes, about W. N. West from Newcastle Town, and distant from Newcastle about six or seven Miles.

Robert Money, of Maryland, the Defendant's own Witness only, born in 1675, [Lib. G. fol. 36. Int. 5. addit. fol. 37.]

When he was a Boy, he has heard several People speak of a Fort at Christiana that was maintained at the Expence of Lord Baltimore, but for what time can't exactly charge his Memory, but believes it to be about four Years. And that it was kept up about 57 Years ago [1633—So this Witness corrects the Time of the others, who were mistaken] Says his Information was from several Persons who he understood to be Soldiers in said Fort, the Name after which was Murrey.

Simon Johnson, of Maryland, the Defendant's own Witness only, born in 1674, [Lib. G. fol. 115. Int. 5. addit. fol. 115.]

Heard there was a Fort on the West side of Christiana Creek, in Colonel Talbot's Time. And that Colonel Talbot used to buy Corn and Beef in Maryland, and sent it to the said Fort, this Deponent having seen some of the Provisions brought. He has heard the said Fort was built by Colonel Talbot. That, after Colonel Talbot left the Province, the Fort broke up, for want of some Person to supply the Men there with Provisions: That the Place where he has been informed the said Fort stood, lay Westward from Newcastle, distant about five Miles.

William Price, of Maryland, the Defendant's own Witness only, born in 1674, [Lib. G. fol. 59. Int. 5. addit. fol. 59.]

Has been at a Place near Christiana Bridge, where, he was informed that a Fort stood. That his Father informed him he helpt to build it. That it stood on the Northwest Side of the said Creek. His Father informed him that Colonel Talbot went, with the People, to build said Fort. The Place where

the said Fort stood was between 5 and 6 Miles distant, to the Northwestward of the Town of Newcastle, and that the said Fort was kept up, for some Years, as he was also informed by his Father, at the Expence of the Province of Maryland.

Samuel Hollingsworth, our Witness, but cross-examined, born in 1673, [Lib. H. fol. 29. Int. 4. fol. 32.]

Has formerly heard that there was a small Fort, called the Maryland Fort, about five Miles Westerly from Newcastle, on the Northwest side of Christiana Creek, and near a Bridge over the said Creek, by Order of the Lord Baltimore, and that the said Fort was kept and maintained, some Years, at the Expence of Lord Baltimore, or the People of Maryland.

John Ryland, of Maryland, the defendant's own Witness only, born in 1672. [Lib. G. fol. 46. Int. 5. addit. fol. 47.]

He has heard, above 50 Years ago [that must be before 1690] a Fort was kept, upwards, commanded by one Captain Murray, and that Colonel Talbot was concerned in the said Fort. In what place it stood, knows not. Has been informed they prest Provisions for the said Fort in the Neighborhood of Bohemia Ferry; How long it was maintained, or at whose Expence, cannot tell.

Walter Scott of Maryland the Defendant's own Witness only, born in 1671, [Lib. G. fol. 52. Int. 5. addit. fol. 52.]

That above 150 Years ago [before 1690] he lived with one Casparus Herman. That being sent on an Errand, to Bread and Cheese Island on Christiana Creek, going over Christiana Bridge, he saw a small strong Loghouse, which was called the Fort. That there was several Port-holes in the said House. That it stood a little way off the said Bridge. That one Murray was said to command it. And this Deponent saw some Soldiers that belonged to the said Fort. That he knew one Thomas Mansfield, a Press-Master for Cecil County, to press Provisions in Cecil County aforesaid, for the Men in the said Fort. That the said Fort was kept up until Colonel Talbot absconded from his usual Abode for killing one Rousby. But what Length of Time it was kept up, can't remember. That the said Fort stood about 6 Miles W. N. West distant from Newcastle Town.

Otho Othoson, of Maryland, the Defendant's own Witness only, born in 1668, [Lib. G. fol. 28. Int. 5. addit. fol. 29.]

Has known a Fort, between the Head of Christiana Creek and White-Clay Creek, in the County of Newcastle. And was once at the said Fort. And it stood on the North side of Christiana aforesaid. Who built it, he knows not, or at whose Expence, or how long it was maintained, but it was called Col-

onel Talbot's Fort. And that the said Fort was between 4 and 5 Miles distant Northward, or Northwest, from Newcastle Town, as he believes.

Eliz. Mercer, of Maryland, the Defendant's own Witness only, born in 1667, [Lib. G. fol. 100. Int. 5. addit. fol. 100.]

She knew a little Loghouse, near Christiana Creek, which was called the Maryland Fort—Believes it was on West-side of Christiana Creek, ; That it was built by Colonel Talbot's Men, above 50 Years ago. It was kept up, some Years, by the said Colonel Talbot, but can't say how long. Does not know how the Fort lay from Newcastle. That her Father's House was computed to be twelve Miles distant from Newcastle. That the Fort lay two Miles nearer Newcastle than her Father's House. That when the People went over the Bridge from her Father's House, they reckoned themselves in Newcastle County; That the other Side, over the Bridge, next her Father's House, they reckoned in Pensilvania; That, about the Year 1679. she came into the Country, and Courts were then held at Newcastle Town, in the King's Name.

John Musgrave, our Witness, but cross-examined, born in 1667, [Lib. H. fol. 34. Int. 4. fol. 36.]

That he knew a small Log-Fort, that was built, after the running Colonel Talbot's Line, about four or five Miles to the North-Westerly of Newcastle, and on the North-West side of Christiana Creek, by the Direction of Lord Baltimore, or Colonel Talbot, as the Affirmant has heard, and was maintained, for some short time, by People from Maryland.

Mordecai Howell, the Defendant's own Witness only, born in 1662, [Lib. H. fol. 54. Int. 6. fol. 56.]

Says that some time in the Year 1683 he was going after a Runaway Servant, and was then shewed a Fort, made with Sapling Poles, as he believes, about 14 Feet square, and told, that it was built and maintained by Order of Lord Baltimore. That he saw some men, and some Fire-Arms, in the same, but knows not the Number.

James Morgan, of Maryland, the Defendant's own Witness only, born in 1660, [Lib. G. fol. 91. Int. 5. addit. fol. 92.]

Has heard there was a Fort kept at Christiana, commanded by one Philip Murray, and that he inquired of some Irishmen who kept the said Fort, what they kept the said Fort for? He was told by them, it was to keep Possession for my Lord. That he has been told that 7,000 Pound of Tobacco was levied in Cecil County, for maintaining the People of the same Fort, but how long it was maintained, knows not, but that it was dropt on Colonel Talbot's killing one Reusby.

How some Persons, for Opposition sake, persue Matters to their own hurt! And what do all these last Sixteen Witnesses amount to, at the very utmost?

Why, there was a Fort, that was built by Colonel Talbot, or Lord Baltimore, or somebody.

It was maintained, for some short time, either by Colonel Talbot himself, or by Lord Baltimore, or by the People of Maryland; and then it was dropt, when Colonel Talbot killed Rousby. For there was nobody then to pay the Expence of it.

And it was situated just by Christiana Bridge, which, by the way, is just where the Swedish and Dutch Fort was.

And now, what Pity it is, that we, by our great Knowledge, should have imposed on my Lord, in the present Agreement, and that he has not, by this present Agreement, quite up to this Fort of his? Or rather, what Pity is it, that he was not precisely limited to this Fort?

In which last Case, we should have saved a Tract of Land, 4 Miles broad, by five whole Degrees in Length, which we have now granted to him, North of, and above that identical Spot of his own former Claims or Encroachments.

Which very Tract contains our antient Town of Nottingham, the richest and most fertile Spot in our whole Province, but which we have now given up, to buy our Peace (as we vainly imagined) after having suffered much more from these ruinous expensive Contests, than Strangers can easily believe or be made sensible of.

Yet he insists, very calmly, that in this Grant there is no Consideration moving from us, we take all the Benefit, and he takes all the Loss, that is, if he is to be believed.

26.

The next thing my Lord Baltimore attempted to prove was, that he had exercised the Government, and he had received the Quit-Rents, in the lower Counties. To which Purpose he examined the three following Witnesses of his own, viz.

Colonel John Ward, of Maryland, the Defendant's own Witness only, aged 67, [Lib. G. fol. 31. Int. 5. fol. 32.]

Has never heard that Lord Baltimore, or any of his Ancestors, exercised any Power or Authority of Government in the 3 lower Counties; and has heard that the Plaintiffs and their Ancestors, have exercised the Powers of Government in the said Counties. Knows not nor has heard, that the Inhabitants of

the said 3 lower Counties have ever paid any Quit-Rent to the Lord Baltimore, or his Ancestors: and has heard several of the Inhabitants of the said three lower Counties say that they had never paid any Quit-Rent to the Plaintiffs or their Ancestors. He has never heard of any other or more Forts, that was erected and kept in the 3 lower Counties, or on the Borders thereof, but one, which he has heard was kept on the North-side of Christiana Creek, or thereabouts, which he believes is in the County of Newcastle, by the Ancestors of the Lord Baltimore, about Colonel Talbot's Time, and that one Drake prest Men to assist those that were in the said Fort, upon a Rumor the Fort would be attackt by the Pensilvanians. And has heard Edward Larrimore, Christopher Mouns, John Wheeler, and several others of the then antient Settlers, declare they had seen the said Fort.

Charles Hilliard, Esq., the Defendant's own Witness only, aged 63, [Lib. G. fol. 158. Int. 5. fol. 163.]

Neither knows, nor has heard, of any Acts of Government done, or exercised, by Lord Baltimore, or his Ancestors, in the three Lower Counties, but that all Acts of Government, for many Years last past, have been exercised by the Proprietors of Pensilvania in the said three Lower Counties. Never knew of any Quit-Rents paid to, or demanded by, Lord Baltimore, or his Ancestors in the said three Lower Counties, but he himself, and divers others, have paid Quit-Rents to the Proprietors of Pensilvania for Land in the three Lower Counties aforesaid. He knew a Fort, in Newcastle Town, held under the Government of the Plaintiffs Ancestors, but knows not of any other Fort in, or bordering on, the said three Lower Counties. That the said Fort at Newcastle Town aforesaid, was maintained and kept up at the Expence of the Inhabitants and the Proprietors of Pensilvania, as he has heard from several of the Members of the Assembly of the said three Lower Counties at Newcastle, but how long the said Fort was maintained, he knows not.

John Holliday, the Defendant's own Witness only, aged 39, [Lib. G. fol. 170. Int. 5. fol. 173.]

Has never known, or heard of, any Acts or Powers of Government exercised in the three Lower Countys, but by and under the Person who was Governor of the said three Counties, and at the same time Governor of Pensilvania. Knows not of any Quit-Rents being paid to the Proprietor of Maryland, but has frequently heard that several of his Neighbors have paid Quit-Rents to the Proprietors of Pensilvania, for Lands held in the upper Part of Kent County aforesaid. Has heard that

the Lord Baltimore had a Fort at Christiana, in Newcastle County, and a small Number of Men, and that the said Fort was kept up, for some time, by Lord Baltimore.

NOTE.—The three last are the Defendant's own Witnesses, whom we have not examined to any one single Word. And they did not please him: So he varied the Interrogatory, by an additional one, dropping the Government and the Quit-Rents and confining it to the Fort only, an account whereof you have had before.

You'll please to observe that the Defendant has sworn that his Ancestors all along exercised all Acts of Proprietorship and Government in the three Lower Countys. Whereas he is, thus flatly, contradicted by his own foregoing Witnesses which he examined in Chief on that Head, by many more of his own Witnesses who speak of that Matter Occasionally, by the whole String of our Evidence also, (and by his Witness Mr. Sharpe, the Clerk of the Council, and by all the Records of the Council Office, from the Year 1702, to this Time.)

But this is a Trifle (with him.)

27.

He had also sworn four other Facts, in his Answer, 1. That the Province of Pensilvania is contiguous to New Jersey. 2. That it is not contiguous to the Lower Countys. 3. That Pensilvania is on our side, and the Lower Counties on the other side, of the Bay of Delaware. 4. That Pensilvania lay on the West side, and the three Lower Countys on the East side of the said Bay and River of Delaware; and he has examined divers Witnesses to prove these Facts; but they being most notoriously false and untrue, not only the following Witnesses, examined by himself in chief thereto, but all the Witnesses that are examined in the Cause, falsify his Answer, in the most direct manner that is possible.

Charles Hilliard, the Defendant's own Witness only, aged 63
[*Lib. G. fol. 158. Int. 2. fol. 159.*]

Says that the three Lower Counties are bounded to the North by the Province of Pensilvania, on the East on Delaware and the Ocean, and Southward and Westward by the Province of Maryland. That the Jerseys lie on the East side of Delaware, and the Province of Pensilvania, and the three Lower Counties on the West side of Delaware.

John Holliday, the Defendant's own Witness only, aged 39, [Lib. G. fol. 170. Int. 2. fol. 170.]

Is acquainted with the Countys of Newcastle and Kent, which

are bounded on the North by Pensilvania, on the East by Delaware, West by Maryland, South by Sussex County, with which he is but little acquainted, having been there but once. That the Jerseys lye on the East side of the Bay and River Delaware. And the Province of Pensilvania, and the Counties aforesaid are divided from New Jersey, by Delaware.

Thomas Hygson Wright, of Maryland, the Defendant's own Witness only, aged 52, [Lib. G. fol. 251. Int. 2. fol. 251.]

Has known the three lower Counties upwards of twenty Years, has resided near to them, and been frequently in them. And has understood, by the Inhabitants of those Countys, that they were bounded on the South by Indian River, and on the East partly by the Ocean and Delaware Bay, and on the North some small Distance to the Northward of Newcastle, and on the West, as far as the running Water of the Branches that drain into Delaware. That New Jersey is not contiguous to Maryland and Pensilvania, or either of the three Lower Counties, but is divided from the same by the Bay and River of Delaware. Knows the Bay and River of Delaware, and understands from the Inhabitants of the said three Lower Counties, that they are bounded, on the East, by the Ocean, from Indian River to the Mouth of Delaware Bay; and from thence, to the Northward of Newcastle, by Delaware Bay or River, still on the East. That he always understood that the Province of Maryland lies on the West side of the Ocean and the said Bay or River Delaware; and that the Province of Pensilvania lies to the Northward of Maryland, and on the West side of the said River Delaware; and the said Province of East and West Jerseys lie on the East side of the said Bay or River of Delaware.

NOTE —This Witness fortifies our Cape, and corroborates our Evidence about the South Bounds of Sussex, for he has known it but from the Year 1720, or thereabouts, and where does he place our South Bounds? why at Indian River, greatly below my Lord's new Cape Hinlopen, almost as low as our true old Cape Hinlopen; and our Witnesses agree, tho' our Bounds were to the old Cape Hinlopen, which is Fenicks Island, on the Branch of Assawaman, yet, about 1696, upon one Peter Waples running away from Maryland to Indian River for Debt, the Sheriff of Maryland, then pursued him thither, and that, since that Time, (which was long before this Witness's Knowledge) my Lord by force, made the few People submit, up as high as to Indian River.

This Observation, kept in mind, will be of great Use, in many other Places.

28.

As the Defendant has so strongly sworn to all Acts of Ownership and Proprietorship, (as well as of Government) having been exercised by himself and his Ancestors, within the three Lower Counties, so he struggled hard to prove a very few Instances of Settlements of Lands under Maryland Rights, every one of which turns out against him.

For Method sake we will begin first with the County of Newcastle.

And first of these, as to a particular Tract sayed to have been surveyed for one Henry Ward.

**Benjamin Pierce, of Maryland, the Defendant's Witness only. aged 28, [Lib. G. fol. 94. Int. 21. fol. 95.]*

Has dwelt above 20 Years in Cecil County, Says that he, who married with the Daughter and Heir at Law to one Henry Ward, amongst his Papers, found a Deposition, dated in March 1724, made by the said Henry Ward, the purport of which Deposition was, that one Evan James had taken a Lease, of the said Ward, of certain Lands bordering upon Newcastle County, claimed by the said Ward under Maryland Rights; that, on complaint of some Welsh People, to a Magistrate of Newcastle County, the said James was taken up, on a Warrant issued by said Magistrate, and was obliged, before the said Magistrate, to deny that he had taken any Lease from the said Ward, otherwise he had been sent to Newcastle Prison; and the said Evan James afterwards, claimed the said Land under a Right from the Proprietors of Pensilvania. And that, by another Deposition, made by the said Ward, found also among the said Ward's Papers, it appears to this Deponent, that one Alex. Lewis, also, had taken a Lease of Land, from the said Ward, that a like Complaint was made by the Welsh People, and the said Lewis was obliged, in some manner, to deny his taking any such Lease, and, since, claimed the said Land under a right from the Pensilvania Proprietors. And well knows that one Evan Jenkins, about 5 Years since, has, under a Pensilvania Right, entered and seated on some of the said Tract, now claimed by this Deponent in Right of his said Wife.

**Idem to the 11th add. Int. fol. 98.*

Knows of no other Lands layd out, or possest, under Maryland Rights, in the Lower Counties, the Quit-Rents on those beforementioned, due to the Year 1712, being paid to the Receiver of Lord Baltimore, as by Receipts under old Mr. Heath's Hand, a Receiver for the said Lord, appears.

This Witness swears himself interested, speaks entirely out

of Depositions which are not produced, and would not be Evidence if they were, being Ward's own Depositions to prove his own Right, and from Receipts which are not produced.

**Richard Thompson, of Maryland, the Defendant's own Witness only, aged 55, [Lib. G. Fol. 109. Int. 21. Fol. 110.]*

Has dwelt 20 Years in Cecil County. Knows of no Ineroachments made by the Marylanders on the Inhabitants of Pensilvania, or their Land, bordering on, or in the Lower Counties. But says that, since 1723, and above 6 Years ago, David Lewis, and several other Persons, have, under Colour of Pensilvania Rights, taken Possession of about 400 Acres, (Part of two Tracts containing 2500) granted above 60 Years ago, as he has reason to believe, having seen the Grant under Maryland Rights, to one Henry Ward. And that the said Lewis and others hold the said Lands, as in Newcastle County. That the Deponent, at the request of Henry Ward, Son of the said Henry, went to assist him, in making a Re-survey of the said Land, but was, by the Pensilvanians prevented. Says that the People of Newcastle County, above 16 Years ago, attempted to take some of the Lands, whereon the Deponent now lives, from him, by running Lines thro' his Plantation, but he, by Threats, has held his Possession. Says there formerly was a main Road, through Part of the said Land of Henry Ward, cleared and kept up, by the People of Cecil County; but that the Inhabitants of Newcastle County, now, prevent their keeping it up, and clear it themselves.

This last Witness swears he has disputed Lands. And we are to have a geat deal more about this Henry Ward, but hitherto, one believes the Land had been granted to Ward, and another talks as if he had claimed it; but no pretence that Ward, or any in his Right, had ever settled upon it, or made any Improvement, and we have proved how Maryland Grants are made.

Laurence Gailshott, of Maryland, the Defendant's own Witness only, aged 60, [Lib. G. fol. 49. Int. 21. fol. 49.]

Has dwelt 20 Years in the Borders of Cecil County. Knows that two Settlements have been made, within 10 or 12 Years past, by Pensilvanians, on Land for 40 Years supposed to be within the Limits of Maryland, one about a Mile to the Southward, and another about a Mile to the Northward, of the Place where the Deponent lives. The last of which was formerly surveyed, and patented, for Henry Ward, under a Maryland Right. That this Deponent and one Richard Thompson, above 20 Years ago, carryed the Chain in surveying the said Land for the said

Henry Ward, [Why the last Witness, Thompson, says it was granted to Ward 60 Years ago, and he saw the Patent; what was it granted 40 Years before it was surveyed?] Knows of no encroachments, by the Marylanders on the Pensilvanians. That one Thomas Noxon, a Surveyor under the Pensilvania Government, surveyed the said Land, to the Southward of where the Deponent lives, for one John Toland who settled the same; and he or his Family now lives at the same, under the Government of Pensilvania.

Three Witnesses have now spoke to Henry Ward's Land, and no one of them pretends that an Inch of it was ever settled under Maryland.

Thomas Price, of Maryland, the Defendant's own Witness only, aged 64, [Lib. G. fol. 86. Int. 21. fol. 86.]

Has dwelt for above 20 Years in Cecil County. That one Edwards about 15 Years ago, and several other Welsh People, since, have, seated under the Pensilvania Proprietors, part of a Tract of Land, taken up under Maryland Rights, for one Ward, under the Lord Baltimore, and reputed to lie in Cecil County in Maryland, and then held by one Vander Skeyden, Mother and Guardian of Henry Ward, a Minor. That the Deponent at her Request, forbid two of the said People to seat on the said Land, and, by the Son of one of them, who persisted in doing it, he was told, that his Father, who could not speak English, would carry the Deponent to the Goal of Newcastle County, if he gave him any Hindrance in seating the said Lands, Does not know whether the said Lands are in, or adjoining to, either of the 3 Lower Counties, but the People seating the said Land under the Pensilvania Proprietors are under the Government of the said 3 Lower Counties.

Obed. Obedience, of Maryland, the Defendant's own Witness only, aged 70, [Lib. G. fol. 55. Int. 21. fol. 56.]

Has dwelt for 20 Years at Back Creek, in Cecil County. Knows that one Edwards, and other Welsh People, since 1723, under pretence of a Right from the Pensilvania Proprietors, have entered and possess themselves of some Lands, which were thentofore surveyed for one Ward, Father of Henry Ward, under a Maryland Right. And the said Land was called Long Acre. And that one Mr. Vander Skeydon, Guardian of the said Henry Ward, informed this Deponent that he paid the Duties for the said Land, to the Proprietor of Maryland, during the Minority of the said Ward, and that the said Edward's Children, and others, now live on the said Land. That the said Persons, who settled the said Land as aforesaid, told this Deponent that one Evans, a Magistrate of Newcastle County, gave them a Warrant

for the said Land; but never heard the said Land was surveyed under a Pensilvania Right; and believes there are near twenty Settlements on the said Land. Knows of no Ineroachments made by any of the Marylanders on the Inhabitants or Lands of Pensilvania.

Instances of this sort being extremely scarce, the Defendant has bestowed five Witnesses on this single Tract of Henry Ward's, no one of which pretends that Ward had ever settled a single Foot of this Land, nor does any one of them venture to say it was in Newcastle County. Some say it was in Cecil County, some that it was reputed to be in Maryland, or within the Limits of Maryland, another that it was bordering upon Newcastle County. If it had been in Newcastle County, we had a Right to it, if it was not in Newcastle County, why then, no Survey of it, nor even Settlement if such had been actually made under Maryland, was any Assertion of the Maryland Claim. We come to two Instances relating to Edward Divier, at the Iron Hills and David Parry.

William Price, of Maryland, the Defendant's own Witness only, aged 66, [Lib. G. fol. 59. Int. 11. add. fol. 62.]

Has heard there were about 56 Years ago, [1684] taken up and surveyed, several Tracts of Land, near the Iron Hills, in Newcastle County under Maryland Rights, one of which Tracts was for one Edward Divier, but does not remember to have heard that any of the Lands were ever settled under Maryland; except by the said Edward Divier's planting some Peach Trees on the said Iron Hills.

This is hear say, and still no Settlement made by Maryland.

**Adam Short, the Defendant's own Witness only, aged 78, [Lib. H. Fol. 60. Int 8. Fol. 61.]*

Says that, in or about the Year 1682, Daniel Tewis had 1000 Acres of land, called the Iron Hills, taken up, for him, under the Defendant's Ancestors, And that, about the Year 1684 or 1685, Philip Lines, one Gossager, and one Lawellins, had 1000 Acres of Land, each, taken up, for them, under the Defendant's Ancestors. All which Lands, about 39 Years ago [1701] were, by Warrant under William Penn. then granted to some Welch People, as Part of the Welch Tract, and have been ever since held, under the Plaintiffs Ancestors, and themselves, as Part of Newcastle County. Further says, that none of the said Lands were ever seated, by any Persons, under Right from Maryland, before the Welch took Possession of them. Further says that, about a Year after the said Welch Tract was surveyed, one David Perry took up a Tract of Land, under the Government

of Maryland, which the said Perry seated, improved, and held till about 20 Years ago, at which Time the Deponent purchased and seated it, for some small Time, and, till some Welch People by force, dispossessed him of it, who have held it ever since. Further says, that the Surveyor, who laid out the Welch Tract, declared, at the taking up the said Land, that it was not, within the Welch Tract.

The Witness chuses not to tell us, where these Lands lay, but wherever they lay, he owns they were never seated by any one Marylander. And he swears himself interested in the Question.

**Richard Thompson, of Maryland, the Defendant's own Witness only, aged 55, [Lib. G. fol. 109. Int. 11. add. fol. 113.]*

Has heard that a Tract of Land, in the County of Newcastle, was formerly taken up, and actually possess, by one David Parry, under a Maryland Right; and another Tract of Land, in the same County, taken up, and reputed to belong to one Lewellin, under a Maryland Right, are now claimed, and possess, by People under pretence of Rights from the Pensilvania Proprietors. [Has not he shewn a just Reason for it, that both those Tracts were in Newcastle County?] And further says, that the said Persons with Pensilvania Rights entred into the said Parry's Land, within a Year after his Death, and before the Persons, who had a Claim to it under Maryland Rights, attempted it. Says he heard the aforesaid Henry Ward frequently say, that he paid the Quit-Rents for the Lands mentioned in his former Answer to 21 Int. to the Lord Proprietor of Maryland.

This Man appeared before to be interested, but if not, yet, now we hear, that Parry's Land lay in Newcastle County. But hitherto, there is not an Inch of Land, pretended to have been settled under Maryland. And it is owned, that tho' there was a Maryland pocket Survey by Maryland, yet no Possession under it, but that the Pensilvians possessed the Lands.

We come now to the pretended Instance of Settlements made by the Marylanders in two Manors called Talbot Manor, and New Munster Manor, still as to Newcastle County, which come out to be nothing at all to the Purpose.

William Rumsey, of Maryland, the Defendant's Witness, [Lib. G. Fol. 129. Int. 2. additional Fol. 139.]

Is well acquainted with both the Tracts of Land called Talbot Manor and New Munster, mentioned in some Exhibits marked No 4. Letters Y and Z, (except the Northern Part of

Talbót Manor) That both of the said Tracts lie in Cecil County in Maryland, but the North Part of Talbot Manor, and the North East Part of New Munster, is now possessed by Persons under the Government of Pensilvania. He believes there are upwards of 50 Plantations made and settled, on Talbot Manor, by Persons under the Government of Pensilvania, and as many Plantations made and settled by Persons under Maryland. And that there are two or three Settlements made, partly, on the said Tract of Land called New Munster by Persons under the Government of Pensilvania, and about 6 or 8 Settlements made by Persons under Maryland rights. That he believes there is about 8000 Acres of Talbot Manor, and 1500 Acres of New Munster, that lie to the North of the East and West Line run as aforesaid.

We suppose that the Exhibits, which this Witness refers to, are Copies of the Maryland Grants of those Manors, and what does he prove? that my Lord's People have settled in the lower Counties? Nothing in the World like it, my Lord has granted out two Manors in Cecil County, and his Tenants possess them; Let them do so, That is not in the three lower Counties; If it proves any thing, it is rather that we have made Settlements upon him, than he upon Us. But even that is not the Case; for the next Witnesses unfold the Mystery, and tell us how notably these two Manors are settled, by either of us; and with all tell us the Reason why both Sides have settled upon the Lands described to make those Manors; Part of them lay in Cecil County, those my Lord's Tenants enjoy; Part of them lay in Newcastle County and those the Pensilvania Tenants enjoy. And even this Witness himself supposes it, for he tells us that a great Part of these Manors lie North of the Temporary Line run by Order of the King in Council lately.

James Alexander, of Maryland, the Defendant's own Witness only, aged 51, [Lib. G. Fol. 80. Int. 11. additional Fol. 81.]

Knows that three hundred Acres, being Part of the Manor of New Munster, extends into the County of Newcastle, which said Manor was surveyed under a Maryland Right, in or about the Year 1684. [This is a good (Maryland) Witness, he swears positively to a Survey being made five Years before he was born] That the aforesaid 300 Acres were first settled, by one David Meredith, about twenty Years ago, under the Proprietor of Pensilvania.

Of this Witness's own shewing, we had a clear Right to do so, and no Pretence that any Settlement was made by Maryland.

**Zebulon Hollingsworth, of Maryland, the Defendant's own Witness only, [Lib. G. Fol. 64. Int. 2. additional Fol. 66.]*

Is not acquainted with the North Bounds of Talbot Manor, but knows the Rivers, mentioned in the Exhibit, No 4. Letters Y. and Z, and has heard and believes, that many of the People, settled in Nottingham Township, under Pensilvania Rights, are settled within the Bounds or Limits of Talbot Manor. And the Reason of his Belief is, because, some of the People so settled have themselves told this Deponent that they lived in Talbot Manor aforesaid. And says the North Part of what is reputed Talbot Manor is now in the Possession of the Inhabitants of Chester County, under the Government of Pensilvania, and the South Part of the said Manor, lying towards Susquehannah, and North East Rivers, is now in the Possession of Inhabitants of Maryland. Says he is acquainted with several of the Bounds of New Munster Manor, the greatest Part whereof is now in the Possession of the Inhabitants of Maryland. That one Philip David, Inhabitant of Pensilvania, claims a Part of said New Munster Manor, under Pensilvania Rights, That he himself has a Right to 300 Acres, under a Maryland Right, but that the same is with-held from him, by the said David. [So I suppose he swears to support his own Right.] That he paid Quit-Rents, for the said 300 Acres, while it was payable in Tobacco. [When was that?] to one Edward Mitchell, who was Receiver of the Quit Rents due for Lands thereabouts to the Proprietor of Maryland, altho' the Deponent never was in Possession of the said Land—That the Part claimed as aforesaid, is reputed to lie in Newcastle County. That the other Part of the said Manor is reputed to lie in Cecil County. That he knows that the said Manors have both been settled 25 Years. [i e. 1715.] and he believes longer. That he believes the greatest Part of what is reputed Talbot Manor lies to the Southward of the West and East Line run pursuant to the Order of his Majesty in Council. That he believes the greatest Part, if not all, of New Munster Manor lies to the Southward of the West and East Line aforesaid.

The Defendant must be very adroit indeed to make this an Instance of his settling Lands within the three lower Counties.

We have but one more Instance, on my Lord's Part, tho' several Depositions, relating to any Settlement ever made by him in Newcastle County, viz. by one Ryley.

Otho Othoson, of Maryland, the Defendant's Witness only, aged 72, [Lib. G. Fol. 28. Int. 11. additional Fol. 30.]

Has heard of several Tracts of Land, in the County of New-

castle, which have been taken up and surveyed under Maryland Rights: and he has been upon one Tract of the said Land, called The Lady's Delight, and another Tract of Land called Timber Reach; and also of another Tract taken up under a Maryland Right, by one Ryley, who this Deponent knows settled his Son upon it under the Government of Maryland, near 60 Years ago, [1680] who lived thereon two or three Years.

And what did Ryley do then? Here this Witness drops us, but the following Witnesses inform us.

**Nicholas Ryley, of Maryland, the Defendant's Witness only, aged 58, [Lib. G. Fol. 41. Int. 11. additional Fol. 42.]*

Has heard his Father John Ryley say, that he the said John purchased, from one Richard Leak 500 Acres, that lay upon Apoquinomy Branches, in Newcastle County. And that he the said John settled his Son William Ryley upon it, under Maryland Rights. That the said William went away, from the Country, and left it, about 40 Years ago. That the Deponent, now claims the Land, by the Deaths of his Father and two Brothers. And that his Mother, and he this Deponent, paid Colonel Hynson, above 26 Years ago, when he was Sheriff of Kent County in Maryland, some Quit Rent for the said Land. And further that, in the Year 1726, he paid Mr. George Wilson, of Kent County aforesaid, 623 Pound of Tobacco, for Quit Rents of the said Land, for the Use of Edward Mitchell, who the Deponent heard had bought the Quit Rents, and threatened to distrain for them. This Witness swears himself interested, and what does he prove, if he were a good Witness? Why, that the Land was in Newcastle County, and the Maryland Tenant run away, and left it, 40 Years ago. But, as this Ryley's Tract was said to be once settled, the Defendant makes a great Bustle about it, and goes on and pursues his Evidence to this.

Colonel John Ward, of Maryland, the Defendant's Witness only, aged 67, [Lib. G. Fol. 31. Int. 11. additional Fol. 35.]

Has heard a Tract of Land, in the County of Newcastle, was possessed, upwards of 30 Years ago, by one Ryley, which was taken up and surveyed under a Maryland Right, and that the said Ryley settled his Son, under the same Right, upon the said Tract.

Hugh Terry, of Maryland, the Defendant's own Witness only, aged 41, [Lib. G. Fol. 39. Int. 11. additional Fol. 41.]

That one William Broxall, settled Thomas Cornwall about 23 Years ago, upon a Piece of Land, near Ryley's Run, in Newcastle County, and told the Deponent that he paid my Lord

his Rent, but what Lord did not particularly mention as aforesaid.

Hearsay as to the Payment of any Rent. Nor is it said under what, or whose Right he settled?

Geo. Veasey of Maryland, the Defendant's Witness, aged 61,
[*Lib. G. Fol. 82. Int. 21. Fol. 83.*]

Has lived, for above 20 Years past, in Cecil County, and has heard of Bustles and Troubles, on Account of Encroachments made, by Inhabitants of both Provinces, but can give no particular or distinct Account of them.

And thus ends the whole Account of all my Lord's Settlements (as they are called) with respect to Newcastle County, and all the pretended Instances of our Encroachments upon him; which amount to this, that Ryley settled a Tract, for two Years, until he ran away and left it, 40 Years ago; and that another Man, one Divier, about 60 Years ago, planted some Peach Trees on Iron Hills.

We now go down to Kent and Sussex Counties, on the same Points; where we are to be very short.

**William Barnes, the Defendant's Witness only, aged 45, who was born in 1695, [Lib. G. Fol. 181. Int. 11. additional Fol. 185.]*

Has heard and believes that, about the Year 1674 or 1675, several Tracts of Land were taken up, in the three lower Counties, by Persons under Lord Baltimore, and, in particular, a Tract of Land called Mulberry Point, in Kent County aforesaid; and also a Neck of Land, called, as he believes, Slater Neck, in Sussex County. And also another Tract of Land, on Little Creek, in Kent County aforesaid. And he has also heard of some other Tracts of Land, in the three lower Counties, that were taken up, and possessed, under Maryland Rights, but cannot particularly name them. Knows not of any Quit Rents being paid for any Lands in the three lower Counties to Lord Baltimore, or his Ancestors, but has heard that Quit Rents have been paid for Lands in the three lower Counties to the Proprietor of Maryland, but believes the Person that told him, knew nothing of it, but by Hearsay. Says what knowledge he has, of the matters aforesaid was, he being at the House of R. Bennett, in Maryland, one Stevens shewed him a List, of near 20,000 Acres of Land, taken up under the Proprietors of Maryland, in the Counties of Kent and Sussex, amongst which, the Tracts before mentioned were named; and told him that the said Bennett had farmed the Arrearages of the Quit Rents of the said Lands, from the then Lord Baltimore, which was the Occasion of the making out of the said List, and that he the said Bennett was to collect and receive them. But the People refused to pay.

Hearsay from a Marylander, who may be now alive, and this Hearsay Witness is an interested one too, and if it were evidence, tho' the Lands were taken up, as they call it, it is not pretended by this Witness, that one foot of them was ever settled, under Maryland Rights, in those Counties of Kent and Sussex.

Samuel Preston, of Philadelphia, our Witness, aged 75, but cross examined, [Lib. II. Fol. 104. Int. 7. additional Fol. 112.]

Knew one John Rhodes, who was a Justice of Peace in Sussex County, about 53 Years ago, [1687] but never knew any of the other Persons. The said Rhodes held Lands upon Rehoboth, in the said County of Sussex, the Affirmant believes, under the Plaintiffs Ancestors. Further says he has heard, of one Captain Henry Smith, that the said Smith, in the Time of the Dutch, and before Proprietor Penn had any Claim to the said three Counties, took up a Piece of Land under the Defendant's Ancestors, in a Neck called Prime Hook Neck, in Sussex County, [This Hearsay is contradicted by the written Evidence, for it was taken up under Governor Andros] but that, afterwards the same Lands were taken up, under Mr. Penn, by the said Smith or his Son, and under the said William Penn and his Family, and have been ever since held by the said Smith's Descendants.

29.

The Defendant wanted next to know, where, and in what Province, four or five particular Gentlemen lived, and who they held their Lands under, which, I suppose was intended to affect the South Bounds of Sussex County, Or, at least to shew that Settlements had been made in the lower Counties under Maryland.

John Teague, of Maryland, aged 85, our Witness, but cross-examined, [Lib. II. Fol. 43. Int. 7. additional Fol. 47.]

That he knew Colonel Francis Jenkins, Captain Henry Smith, John Rhodes and Miles Grey, upwards of 40 Years ago, but does not remember to have seen William Prentice. That Colonel Jenkins, Henry Smith, and Miles Grey lived in Somerset County in Maryland, and he believes held their Lands under the Defendant's Ancestors. But that John Rhodes lived in Sussex County, and has heard him, the said Rhodes, say, held his Lands under William Penn Esq:

NOTE, It appears in our written Evidence, That John Rhodes was appointed by Governor Andros to be an Ensign of the Company of Foot at the Whorekills on 26 October, 1676, and upon the 10th of November, 1677, was appointed one of the Justices of the Whorekill Court by Sir Edmund Andros, and

upon 8 October, 1678, was again appointed by Sir Edmund Andros one of the said Justices of Whorekill County, and upon 1st and 17th June, 1680, one of the Justices for the Whorekill Court, by Sir Edmund Andros, and, as such took the oath in Person before Governor Andros, and had a Dedimus to swear, and did swear, the other Justices; and that when Mr Penn came, soon afterwards, he was immediately appointed, by Mr. Penn one of the Justices for Whorekill District upon the 17th. November, 1682, and again, one of the Justices, for that District, by its new name of Sussex County, upon 25th December, 1682. So that they'll scarce attempt to make John Roads a Maryland Tenant.

As to Henry Smith, he never took up his mentioned Lands under the Defendant's Ancestors at all. On the contrary, we have, in our written Evidence, the Grant made to him by Governor Andros, (between 1674 and 1677) of the 3000 Acres called Prime Hook, near Slaughters Creek by Prime Creek; besides which, we have Governor Andros's Commission to the said Henry Smith to be one of the Justices of the Whorekill Court, dated 10 November, 1677. And we also have the Order of 30th November, 1678, made by the Governor and Council at New York, fining him for slandering the rest of Magistrates there; and binding him to his good Behaviour. So that he was originally the Duke of York's Tenant and Servant at the Whorekills; whether he afterwards went down into Somerset County in Maryland, being angry at having been fined, we know not.

As to William Prentice, we have also the Grant which was made to him by Governor Andros (between 1674 and 1677) for 400 Acres in the Woods 5 Miles S. W. from the Whorekill Town; so that he also was the Duke of York's Tenant.

My Lord says in his Answer, fol. 188, 189, he, and his Ancestors, have been at very great Expence, from time to time, in improving and cultivating the three lower Counties, and the foregoing are the Proofs, by which he would support that gross Falsity.

And here end all the Proofs relating to any Settlement, ever made by him, or his Tenants, within any of the three lower Counties.

30.

It will be proper, therefore, in the next Place, to see, from his own Witnesses, what Number of Inhabitants, they themselves allow to be in the three lower Counties.

My Lord, in his Answer, believes, there may be 40,000; but) as usual) they have examined Witnesses to falsify his Answer, and to make the Number less than he admits.

* *William Barnes*, [*Lib. G. fol. 181. Int. 17. add. fol. 189.*]

Has lived in Kent County above 20 Years, and believes there are in the three lower Counties about 1500 or 1600 Housekeepers and Inhabitants, that pay Taxes, a tenth Part whereof he believes are Quakers.

John Holliday, [*Lib. G. fol. 170. Int. 17. add. fol. 178.*]

Has resided 20 Years in Kent County, and believes there is upwards of 1500 Housekeepers and Inhabitants, in Newcastle and Kent, that pay Taxes, and believes that about 300 of the 1500 are Quakers.

Cornelius Wittbank, [*Lib. G. fol. 207. Int. 17. add. fol. 207.*]

Has lived in Sussex County ever since he was born. Believes there are about 4 or 500 Houskeepers and Inhabitants in Sussex County, that pay Taxes, and about 800 in Kent County, and in Newcastle County about 1200. Three hundred of which, or thereabouts, he believes, are Quakers.

George Ross, [*Lib. II. fol. 67. Int. 3 & 4. fol. 69.*]

Says, there are four Clergymen of the Church of England, settled in the three lower Counties, namely Mr. Pugh, Mr. Usher, Mr. Becket, and the Deponent; who are all Missionaries from the Society for the Propagation of the Gospel in Foreign Parts. He is not acquainted with the Number of Inhabitants in any of the three lower Counties, besides what are within his own District, which is but narrow, and in the Hundred of Newcastle; wherein, by computing four in a Family, he reckons there are about 800, including Men, Women and Children, whereof about 240 are of the Church of England, about 70 Quakers, and the rest Dissenters of different Denominations.

John Pugh, [*Lib. II. fol. 67. Int. 3 & 4. fol. 68.*]

Says, there are four Clergymen of the Church of England, settled in the three lower Counties, and that they are settled there by Authority from the Bishop of London, as Diocesan. He has been so ill a great while, he has not been able to take any Account of the Number of Inhabitants in his own Parish.

Arthur Usher, [*Lib. II. fol. 74. Int. 3 & 4. fol. 75.*]

He says, there are but 4 Clergymen of the Church of England settled in the three lower Counties: and as he has heard and believes, they are settled as Missionaries from the said Society. He does not know the Number of Inhabitants in the three lower Counties, or either of them. But has heard and believes there

are in Kent County about 840 Taxable Inhabitants, of which about 382 profess themselves to be of the Church of England, and 109 of them profess themselves Quakers; and the rest Christians, of different Denominations. Says, the Parish under his Care, is the said County of Kent, and he is annually obliged to make a Report of the Number of People in the said Parish, and their different Persuasions, to the said Society, and that, for that purpose, he had made the best Enquiry he could.

Daniel Rodney, aged 45, [Lib. G. fol. 190. Int. 17. add. fol. 191.]

Has lived in Kent County from his Infaney, and says, that having been, for some time, Clerk of that County, and having an opportunity of inspecting the Levy-List, believes there are about 800 housekeepers and Inhabitants that pay Taxes in Kent County. Of which he believes there are about 50, who are reputed to be Quakers.

William Becket, [Lib. H. fol. 57. Int. 3. fol. 57.]

He says there are four Church of England Clergymen, settled in the three Counties, by Order of the said Society. That this Year, in order to make a Report to the Bishop of London, of the Number of Persons within this Deponent's Parish, which is the County of Sussex, He went to the Clerk of the County, with one of his Church-Wardens, and consulted the Levy-List of the said County; and, computing the Number at five in a Family, they esteemed the whole to amount to about 1800 People. He believes that 5 in a Family were as many as there were, upon an Average. That, agreeable to the above Calculation, he believes there may be about 1100 of the said People, of the Church of England, and the rest of them Dissenters, but can't tell how many are Quakers; but that upon an Enquiry, about three Years ago, he found that there were about 17 Families of them, in the said County.

A most impertinent Inquiry, to gratify my Lord's Curiosity, but no way in Issue, what Religion or Persuasion any of the People are of.

31.

The Defendant examined eight more Witnesses, on his Part, about the Payment of Quit-Rents in the lower Counties, viz. The two first, as to the County of Newcastle; The two next, as to the County of Kent; and the four last, as to all the three Counties in general.

George Ross, of Newcastle County, the Defendant's Witness aged 59. [Lib. H. fol. 69. Int. 9. fol. 71.]

Has lived in Newcastle County about 30 Years. Has heard,

from many of the Inhabitants in the said County, that they had refused to pay Quit-Rents for the Lands they held therein, and declared that they would do so, unless they had Deeds to indemnify them from all Persons whatsoever; and particularly from one Joshua Story, who, having taken a Warrant to take up Lands from the Plaintiffs, afterwards declared, that he would never pay any Quit-Rents for the same, unless he could have a Patent, with a Clause of Indemnification against all other Persons. Says, that the said Persons, who so refused to pay their Quit-Rents, alledged for the Reason of their Refusal, that the Title to the said Lands was disputed between the Proprietors of Pensilvania and Maryland.

**Adam Short, of Newcastle County, the Defendant's Witness only; aged 78, [Lib. H. fol. 60. Int. 9. fol. 74.]*

He now lives, and for 49 Years past has lived, in Newcastle County. That formerly the Inhabitants of the said County generally paid their Quit-Rents to the Plaintiffs Ancestors, but, about thirty Years ago, many of them refused to do it, and the Deponent believes have not, since, paid any, to any Person whatsoever, because the People were told of the different Claims of the Crown, the Lord Baltimore and the Penns, and were at a loss to know their Landlord. Does not know that any Suit, or Distress, has ever been made, for any Rents, due to any Proprietor of the three Counties; but has heard that, above thirty Years ago, the Land of one Burrows at Apoquinimy, in Newcastle County, was seized, by a Collector of Rents for William Penn Esq; and sold for Discharge of the same.

Isaac Freeland, of Kent County, the Defendant's Witness only, aged 54, [Lib. H. fol. 65. Int. 9. fol. 66.]

Has lived in Kent County above 48 Years. That the Inhabitants of that County have, generally, refused to pay Quit-Rents for the Lands they hold, because they did not know whether the Lord Baltimore, or the Plaintiffs, were their Landlords. He never heard of any Distress being made, or Suit brought, for the Recovery of any Quit-Rents for the Land, in the said County.

John Holiday, of Kent County, the Defendant's Witness only, aged 45, [Lib. G. fol. 170. Int. 6. fol. 170.]

Has frequently heard, that several Persons, formerly, have paid Quit-Rents for Lands in the County of Kent, to the Proprietors of Pensilvania, but he has not known, or heard of, any Quit-Rent being demanded, or paid since the Lord Baltimore set up a Claim to the three Counties.

James Potter, of Kent County, the Defendant's Witness only, aged 64, [Lib. G. fol. 150. Int. 6. fol. 150.]

Says, that many Years ago, in the Life of the Plaintiffs Father,

Mr. Logan came to Dover, to demand Quit-Rents from the Inhabitants in the three lower Counties in question, for the Use of the Plaintiffs Father; and that, afterwards, one Clarke, an Agent, as he supposed, to the Proprietor of Pensilvania, came, demanded, and received of several, in the said County of Kent, some Quit-Rents. But, there being a Dispute between the Proprietors of Maryland and Pensilvania, concerning the Right to the said three lower Counties, the Generality of the People in the said Counties refused to pay any Quit-Rents, by Reason, as he understood and heard, they thought a Receipt for the Quit-Rent from one Proprietor would not discharge them against the other.

**Daniel Needham, of Kent County, the Defendant's Witness only, aged 57, [Lib. G. fol. 155. Int. 6. fol. 156.]*

Believes some of the Inhabitants of the three lower Counties have paid Quit-Rents for Lands in the lower Counties to the Pensilvania Proprietors, and some have refused to pay; the Reason of which Refusal, as he heard, was because the Right to the said Counties was contested. Some said it belonged to the King, some said to the Proprietor of Pensilvania, some to the Proprietor of Maryland. The Quit-Rent for the Land whereon this Affirmant now lives, in Kent County, was paid to the Proprietor of Pensilvania till the Year 1705, it being in the whole about 20 Years, but knows of no Quit-Rents that have been lately paid in the said three lower Counties.

Charles Hilliard, of Kent County, the Defendant's Witness only, aged 63, [Lib. G. fol. 158. Int. 6. fol. 165.]

Believes the Inhabitants in the three lower Counties have not, for some Years last past, paid any Quit-Rents for Lands to the Proprietors of Pensilvania; and the Reason why they don't pay any Quit-Rents is, because of a Dispute between the Proprietors of Pensilvania and Maryland, as he apprehends.

**William Barnes, of Kent County, the Defendant's Witness only, aged 45, [Lib. G. fol. 181. Int. 3. fol. 182.]*

Has heard that Quit-Rents, for Lands in the lower Counties, have been paid to the Proprietor of Pensilvania; but has not heard that any Quit-Rents have been paid or demanded since he lived in this County, which is above 20 Years; he has seen, and had in his Custody, a Receipt, for Quit-Rents, that was paid for the Use of the Proprietor of Pensilvania, for Land and Marsh, which he is now in Possession of in Kent County.

NOTE—The last 8 are all of them the Defendant's own Witnesses, and we did not examine any one of them at all, except Mr. Ross.

NOTE—The Articles of Agreement recite (as one of the Inducements thereto) that, notwithstanding several Treaties and Endeavours for settling the Disputes and Differences, divers Difficulties had risen, and many Persons had seated themselves, upon great Parcels of the Lands in dispute, without Authority from either of the Proprietors, and without paying the usual Fines or Quit-Rents, or conforming themselves to the Government and Establishment settled in any of the said Provinces or Counties; but, for the putting a final and friendly End and Accommodation to the said Disputes and Difference, It is agreed, &c.

32.

In the next Place, my Lord examined the Clerk of the Council here, to prove, that we had always appointed the Governour for the lower Counties, but that, upon the Crown's approving of such Governours, we signed a Declaration that it should not prejudice the Right claimed by the Crown.

William Sharpe, Esq., Clerk of the Council, [Lib. F. fol. 1. Int. 4. fol. 3.]

Is acquainted with the Method which hath been taken in appointing a Governour, or Deputy, or Lieutenant Governour for the three lower Counties, and hath been acquainted therewith, for about 30 Years last past, by means of having, during the said Time, belonged to the Privy Council Office, and is now one of the Clerks of the Privy Council. And saith that, to the best of this Deponent's Knowledge, Remembrance, and Belief, such Deputy or Lieutenant-Governour, hath, from time to time, during his Knowledge as aforesaid, been nominated by the Proprietor or Proprietors of the Province of Pensilvania at the same time when such Proprietor or Proprietors hath or have nominated to the Crown a Person to be Deputy or Lieutenant Governour of the said Province of Pensilvania. And saith that one and the same Person hath always, during this Deponent's said Knowledge, been so nominated as aforesaid Deputy or Lieutenant Governour for the said 3 lower Counties, and Deputy or Lieutenant Governour for the said Province of Pensilvania; and that such Nomination of Deputy or Lieutenant Governour, hath been, always, laid before the Crown, in Council, by way of Petition or Representation, by the said Proprietor or Proprietors, thereby humbly praying the Approbation of his or her Majesty for such person to be Deputy Lieutenant Governour. as aforesaid. And further saith that it hath

been usual for such Governour to be first approved of by the Crown, before he can take upon, or has any Jurisdiction over, the said three lower Counties; and that, in his Judgment and Belief, it is necessary for such Governour to be first approved of by the Crown, before he can take upon, or has any Jurisdiction over, the said three lower Counties; and the Reason of his Judgment and Belief is, for that such Proprietor or Proprietors, in his or their said Petition or Representation, doth, or do set forth, that such Person is nominated Deputy Lieutenant Governour, to his or her Majesty, in pursuance of an Act of Parliament in that behalf or to that Effect; And saith that, in the Order, of the Crown in Council, signifying the Royal Approbation of the Person nominated, to be Deputy or Lieutenant Governour of the said Province of Pensilvania, and the said 3 lower Counties, aforesaid, it hath always been signified, that the Crown approves of such Person to be Deputy or Lieutenant Governour of the said Province of Pensilvania, without any Limitation of Time, and to be Deputy or Lieutenant Governour of the said 3 lower Counties, during the Pleasure of the Crown, or to that Effect. And further, saith, that to the best of his Knowledge and Belief, it hath not been insisted upon, on Behalf of the Crown, or of any other Person or Persons, that the Governour should sign or subscribe a Declaration in Writing, signifying that such Appointment of a Governour, or Deputy, or Lieutenant Governour of the said 3 lower Counties should not in any manner be construed to establish any Right in the Proprietors of the said Province of Pensilvania to the said 3 lower Counties, or to any other Purport or Effect; Nor had the Governours or Deputy, or Lieutenant Governours of the said 3 lower Counties, at any time, to the best of his Knowledge and Belief, upon their being appointed to such Government, signed or subscribed any Declaration, to that Purport or Effect; But, saith that, to his Knowledge, it hath been insisted upon, by, or on the Behalf of the Crown, upon the Approbation of the Crown of such Deputy, or Lieutenant Governour, as aforesaid, that such Proprietor or Proprietors as aforesaid, should make a Declaration, in Writing, that the Approbation of the Crown, of such Deputy or Lieutenant Governour, of the said 3 lower Counties, should not be construed in any manner to diminish or set aside, the Right, claimed by the Crown, to the said 3 lower Counties, or to that Purport or Effect; And that, also, to the best of his Knowledge and Belief, unless such Declaration, in Writing, be made, by the Proprietor or Proprietors as aforesaid, such Deputy or Lieutenant Governour would not have been admitted to such Government; it having been, to his Knowledge, an usual Condition, in the Order of the Crown, approving of such

Governours, that the said Proprietor or Proprietors should make such Declaration as aforesaid, unless such Declaration had been made by such Proprietor or Proprietors before the approving of such Governours, which hath been done sometimes.

NOTE—The foregoing Deposition is precisely true, and is indeed the Sum and Substance of a Number of Orders of Council, made upon our Appointments of Governours, from time to time, since the Year 1702; at which time, when we applied for the Crown's Approbation, pursuant to the then new Act of Parliament the said Declaration was first required of us, and has, ever since that time been, on such occasions, renewed. But Mr. Penn, in Person, and his Deputies, before that time, and from the Year 1682, exercised the Government of the 3 lower Counties, for near 20 Years together, and had the Government of the same restored to him by the Crown also without any one such Declaration, till that new Act of Parliament was made, requiring Proprietors of all Plantations abroad, to have the Crown's Approbation of the Governours which they appointed: and that gave the first Opportunity of requiring that Declaration from us.

33.

The Defendant next enquired how many Ports and Harbours there were, in going up Delaware Bay?

Thomas Hynson Wright, of Maryland, aged 52, the Defendant's own Witness only, [Lib. G. fol. 251. Int. 18. add. fol. 258.]

Is but little acquainted with the Bay, or River of Delaware, and therefore can't take upon him to describe how many Ports or Harbours there are therein; having never been in any of them, but St. George's Creek on the West, and Salem Creek on the East.

John Price, a Pilot, aged 42, the Defendant's own Witness only, [Lib. G. fol. 199. Int. 18. addit. fol. 200.]

Is acquainted, and has been for 30 Years past, with the Bay and River of Delaware, by sailing up and down the same. Says there is, on the East side of the said Bay, Harbours fit for Trade and Shipping, viz. Morris's River and Cohansie Creek. And on the East side of Delaware River, Salem Creek, Timber Creek, and Ankokus Creek—And that there is on the West side of the said Bay, Prime-book Bay, and, on the West side of the said River, St. George's Creek, Christiana Creek, Derby Creek, and Skunkkill River.

These, I suppose, are to shew that there is no absolute Necessity that the Proprietors of Pensilvania should have

the lower Counties also, for the sake of Harbours in them; for that, truly, in coming up the Bay to Pensilvania, there are other Harbours, also, on the other side of the Bay, in New Jersey.

But he don't shew us where those Places are situated; and if he did, Does the Wind always favour to stand at West, to carry Ships in Times of Danger, into those Eastern Harbours? And if it did, must not Pensilvania Ships pay Port-Charges, if they go into another distinct Province? But this Witness, is a Pilot, and a very knowing one, and has proved a material Fact for us, which the Defendant is not aware of. You observe, he carefully distinguishes (on both Sides) which of the Harbours are in the Bay, and which are in the River of Delaware; and he says St. George's Creek is in the River; That proves then that the Bay is ended, at least, there; and that is, (upon a direct North Course) above 8 Miles South of Newcastle. Whereas, by the Articles, we convey to my Lord about 5 Miles above Newcastle, North of it.

Consequently, at least, those 13 Miles above the furthest Part of the Land-mark mentioned in his own Charter.

34.

We had, abundantly, proved that, when Goods came, not out of Pensilvania, but merely out of the lower Counties, Duties were demanded for them in Maryland, under Laws, past there which affected only Pensilvania, and its Territories thereunto belonging, and had consequently shewn that, in Maryland, and even by the Legislature of it, the lower Counties were considered as the Territories belonging to Pensilvania, (notwithstanding my Lord's absolute Denial of that Fact.) He, not contented, goes on to examine Witnesses, in order, if possible, to have contradicted that Fact; but it comes out, as usual.

John Scott, aged 34, our Witness, but cross-examined by the Defendant, [Lib. II. fol. 73. Int. 10. fol. 74.]

He himself has paid Duty for Rum imported, by Land, from Apoquinomy, to the Head of Bohemia River; but does not know where the Head of Chesopeak Bay is. That the Rum was never landed at Philadelphia, but brought directly from Antigua to Apoquinomy.

John Carnan, of Maryland, Merchant, our Witness, but cross-examined by the Defendant, [Lib. II. fol. 52. Int. 10. fol. 53.]

Has known Duty paid for Rum and Negros imported, by

Land, to the Head of Bohemia, and to Susquehanna River; but does not know the Head of Chesapeake Bay, or that any Rum or Negros have been thereto imported by Land.

35.

The next Step my Lord took, was to fish for some Counties, called Durham and Worcester Counties, seittuate somewhere or other; but nobody knows any thing of any such Counties.

John Teague, of Maryland, aged 85, our Witness, but cross-examined, [Lib. II. fol. 43. Int. 9. addit. fol. 48.]

That he has heard of a County called Worcester County, but knows nothing about it.

36.

Well, there was another Fact my Lord wanted to prove, that, lately, one Cressap, had held a Fort, some where or other, under Lord Baltimore's Government, and to that end he cross-examined our two following Witnesses.

Samuel Hollingsworth, aged 67, [Lib. II. fol. 29. Int. 2. addit. fol. 33.]

Our Witness cross-examined, has heard of a Fort, on the West-side of Susquehannah, lately kept by one Cressap, under the Government of Maryland; and has heard, upwards of 40 Years ago, that, there formerly was an Indian Town and Fort, on the East-side of Susquehannah, near the Mouth of Octorara.

John Musgrave, another of our Witnesses, aged 73, cross-examined, [Lib. II. fol. 34. Int. 2. addit. fol. 39.]

Has heard of no other Fort, on the West-side of Susquehannah, than one, that was lately kept there, under the Government of Maryland, by one Captain Cressap.

NOTE—No Place mentioned, by either of these Hearsay Witnesses, for Cressap's late Fort; and the River Susquehannah runs down, North and South, Part of it in and through both Provincies.

37.

Now we come to the Defendant's Proof, in relation to the Agreement, and the Treaty in order thereto.

John Sharpe, [Lib. I. fol. 14. Int. 5. fol. 15.]

That this Deponent doth know of, and was privy to, a Treaty that was entered into, and carried on, by and between the Plaintiffs and Defendant for settling and determining the Bounds

between the Provinces of Maryland and Pensilvania, this Deponent being concerned for the said Defendant, as his Solicitor, in relation thereto; but saith that he doth not know, nor can he say, otherwise than as herein after is mentioned, when, or by whom, such Treaty was first proposed or set on foot; or upon whose Application, Solicitation, Instance or Request; this Deponent not being privy to the first Commencement of the said Treaty, and not being made acquainted therewith, or consulted therein, until after some Progress had been made therein; and that, when this Deponent came to be employed and concerned in the said Treaty, this Deponent apprehended and understood, that the said Treaty was first proposed, and set on foot, by the said Plaintiffs, and that the same originally proceeded from their Application, Solicitation, Instance and Request; And this Deponent believes the same to be true, for that, after this Deponent was concerned and employed therein, the said Plaintiffs Solicitor Mr. Paris, on their behalf, was much more pressing for the effecting and compleating the said Treaty, than the said Defendant the Lord Baltimore; but, in what manner, or with what View, or Design, such Treaty was so proposed, and set on foot, otherwise, than to fix and ascertain the Boundaries between the two Provinces of Maryland and Pensilvania, this Deponent, being of his own Knowledge a Stranger thereto, cannot set forth. And further saith, that this Deponent was present at two several Meetings, (and not more than two, to the best of his now Remembrance and Belief) which were had between the Defendant and the Plaintiffs, or some of them, upon the Subject-manner of the said Treaty, but the Times when, or Places where, this Deponent cannot set forth, other than to the best of this Deponent's now Remembrance and Belief they were had in July or August, 1731, at the Bedford-Head Tavern near Covent-Garden in the County of Middlesex. And saith that the Defendant, Mr. Ogle, the Plaintiffs John and Thomas Penn, Thomas Beake Esq; since deceased, the Plaintiffs Solicitor, Mr. Paris, and this Deponent, were present at one, if not at both, of the said Meetings, but whether any other Persons, and if any, who else, were present thereat, this Deponent cannot recollect. And saith that the principal Discourse, which passed at such Meetings, was, in relation to bringing the said Treaty to a Conclusion, and agreeing upon the Heads thereof, and giving Instructions for carrying the same into Execution, by directing proper Deeds or Instruments to be prepared for that Purpose; And that, to the best of this Deponent's now Remembrance, and as he verily believes, there were two little Plans or Maps produced, upon that Occasion, at one of the said Meetings, the one of them by the Defendant, and the other of

them by one of the Plaintiffs, either the said John or Thomas Penn, but which particularly can't recollect; and which said two Plans or Maps, to the best of his present Remembrance and Belief, corresponded and agreed with each other. And saith that the Defendant the Lord Baltimore, upon the said Plan or Map so produced by him, and the said Plaintiff John or Thomas Penn, upon the said Plan or Map produced by one of them, did, to the best of this Deponent's now Remembrance and Belief, with a Pencil, draw Lines, which were so done, in order thereby to denote, as this Deponent understood and believes, in what manner the Boundary-Lines in Controversy between them ought to be run; but this Deponent, not putting down in Writing what passed at such Meetings, cannot set forth the Substance, Purport, or Effect of the several Proposals, Objections and Observations which were made use of, upon the Matters then under Consideration; nor by whom by Name the same were respectively so made: save that, in general, this Deponent very well remembers that the said Plaintiffs John and Thomas Penn seemed, as this Deponent apprehends, and is of Opinion, to have been much better prepared for such Meetings than the said Defendant, who seemed to have no other Information of the Matters, then under Consideration, than what arose from the said Plans or Maps, and the Information he received from the said John and Thomas Penn, and upon whose Representation of the Matters, then under Consideration, the Defendant, to the best of this Deponent's now Remembrance and Belief, seemed principally to rely; his Lordship being then, as this Deponent verily believes, of his own Knowledge, an entire Stranger to, and wholly unacquainted with, the Situation of the said Country; And which said Plan or Map (so produced by the said Defendant, and upon which, and the Information given him by the said Plaintiffs John and Thomas Penn, his Lordship seemed, in the Opinion and Judgment of this Deponent, entirely to rely) was, as this Deponent hath been since informed by the said Defendant and others, and therefore doth believe, drawn in Pensilvania, and sent from thence to Maryland, to the said Defendant the Lord Baltimore's Agents there, and by them transmitted to his said Lordship in England; And this Deponent hath been since informed by his Lordship and others, and therefore doth believe, that the said Plan or Map, so produced by the said Defendant, was very incorrect or erroneous. And this Deponent saith that, to the best of his Remembrance and Belief, either the said John or Thomas Penn declared, at such Meeting at which the said Plan or Maps were so produced, that the Plan he so produced, had been sent him from Pensilvania, by the Deputy Governor there, in order to

treat with the said Defendant the Lord Baltimore in Relation to the settling the said Boundary-Lines. And this Deponent saith that there was no other Map or Plan, to the best of his Remembrance and Belief, made use of, on such Treaty, than the aforementioned two Plans or Maps. And the Reason no other Map or Plan was then used, was, as this Deponent verily believes, from a firm Persuasion and Opinion, in the said Defendant the Lord Baltimore, that the same were just Plans, and that he might safely rely thereon. And this Deponent further said, that he is very sure, that nothing passed at the said Meetings, on either side, that was, in the least, over-bearing, but all seemed to be transacted in a very friendly manner, and that there were Concessions mutually made, on each side, to the best of this Deponent's now Remembrance and Belief; And this Deponent further saith that, to the best of his now Remembrance and Belief it was agreed, at the said Meeting where the said Plans or Maps were so produced as aforesaid, that the said Plan or Map, so produced by the Defendant the Lord Baltimore, should be the Plan or Map on which the Agreement then came to, should be founded; and that the same should be affixed, or annexed, to the Agreement, as a Means the better to explain the same; And this Deponent very well remembers that Mr. Senex, since dead, was pitched upon as a proper Person to be employed in engraving the said Plan or Map, and who was, as this Deponent believes, named by the said Defendant the Lord Baltimore, as one he had heard of, but not as one he was at all personally acquainted with; And this Deponent saith that, to the best of this Deponent's now Remembrance and Belief, the said Plaintiffs John and Thomas Penn immediately agreed to the said Mr. Senex being employed therein; And this Deponent doth not remember that any other Person, by Name, was proposed for that Purpose; And this Deponent further saith that the said Mr. Senex did, accordingly, as this Deponent apprehends and believes, engrave the said Plan or Map on the Parchment-Writing, on which the said Agreement was afterwards engrost; And that the Plan or Map, marked on the Backside thereof with the Letter (F) appearing to be printed or stampd upon the Parchment-Writing, markt with the Letter (G) and purporting to be Articles of Agreement between the said Defendant the Lord Baltimore and the Plaintiffs, now produced, does, as this Deponent apprehends and verily believes, exactly agree with the said Plan or Map so produced by the said Defendant the Lord Baltimore, and made use of at such Meeting as aforesaid; and that there is no Variation or Difference therein to the best of this Deponent's Knowledge and Belief, from that so produced as aforesaid by the said Defendant

the Lord Baltimore; and this Deponent saith that at such Meetings as aforesaid, or one of them, the said Defendant the Lord Baltimore did, to the best of this Deponent's now Remembrance and Belief, produce a Paper-Writing, purporting to contain Notes of Matters he the said Lord Baltimore proposed should be provided for, and inserted, in the Agreement which was then intended to be entred into; and which said Paper-Writing was all of the proper Hand-writing of the said Defendant the Lord Baltimore, as this Deponent verily believes. And this Deponent saith that such Paper-Writing did not purport to be compleat Notes of every thing, or to contain the Substance of all the several Matters proposed as Part of the said intended Agreement but only, to purport or contain short Notes or Heads concerning the Matters then under Consideration, and were made, as this Deponent apprehends and believes, only as Memorandums for the said Defendant the Lord Baltimore against the said Meetings, to remind himself thereof, and to prevent his forgetting the same; And this Deponent saith that it was not proposed, desired or insisted upon, by the said Defendant the Lord Baltimore, or on his behalf, at such Meetings, or either of them, that the said Agreement should be drawn on the Foot of those Notes only, but that all that was insisted upon by the said Defendant, the Lord Baltimore, or on his behalf, was, that the several Matters contained in the said Notes, should be provided for, and inserted in the said Agreement, and which the said Plaintiffs John and Thomas Penn agreed to; And further this Deponent saith, that the said Paper-Writing or Notes were read over, at, such Meetings or one of them, to the Company then present, by the said Defendant the Lord Baltimore; And that, to the best of this Deponent's present Remembrance and Belief, either the said Plaintiff John or Thomas Penn, or the said Mr. Paris, for or on the behalf of the Plaintiffs (but which of them in particular, this Deponent cannot recollect) did ask or desire the said Defendant the Lord Baltimore, to deliver to him the said Paper Writing or Notes, in order to insert them into the said Agreement; To which the said Defendant the Lord Baltimore answered, to the best of the Deponent's now Remembrance, and Belief, that he had no Copy of such Paper or Notes, but that he would deliver the same to this Deponent his Solicitor, in order to this Deponent's giving them a Copy thereof; and his Lordship did then, at such Meeting, deliver the same to this Deponent, with Directions to make and send, the Plaintiffs, or the said Mr. Paris, a Copy thereof, in order to insert the same in the said Agreement; And the said Defendant the Lord

Baltimore, did, very readily, and without any the least Difficulty, agree and consent thereto; And this Deponent further saith that, in some few Days afterwards (but the particular Day when, this Deponent cannot now recollect) he this Deponent did give, or send to, the said Mr. Paris, and for, or on the behalf of the said Plaintiffs, a Copy of the said Paper-Writing, or Notes, and which, as this Deponent verily believes, was a true and exact Copy thereof: And this Deponent saith that the Purport or Substance of the said Paper-Writing or Notes, so produced as aforesaid by the Defendant, is as followeth (that is to say) "1. There shall be a Circle of 12 M—Dist"—drawn from Newcastle. 2. The Proprietors of Pensilvania "shall be intituled to 15 Miles South of Philadelphia, by a West "Line drawn from the Point of the South and North to the "Extent of their West Limits, comprized in the Charter of "Pensilvania. 3. There shall be a Line South drawn from East "and West Line aforesaid, which shall intercut the Periphery "of the Circle of twelve Miles from Newcastle*, until it inter- "cut the Parrallel of an East and West Line drawn to the Pro- "montory or Cape called Cape Hinlopen at Rect-Angles. 4. The "Lord Baltimore to quit all Pretensions to the three Lower "Counties, known to be at present comprized within the Limits "aforesaid (that is to say) within the twelve Mile Circle of "Newcastle, and the North and South Line drawn as aforesaid "on the West, and the Bay of Delaware on the East. 5. The "Proprietors of Pensilvania to quit all Pretensions to any Land "to the Southward of the Line of 15 Miles from Philadelphia, "and to the West of the North and South Line heretofore "described, and for the Considerations aforesaid, convey to "the Lord Baltimore all Right and Title they may have there- "unto belonging. 6. For the quieting the present Possessors "of the Land in Dispute, and the better informing the respec- "tive Proprietors of the Provinces aforesaid, It is agreed by the "Parties contracting, that it shall and may be lawful for each "Proprietor to have Copies, at their respective Costs and "Charges, of the Grants, Patents, Leases, &c. by which any of "the present Claimants hold their Lands; and moreover it is "mutually agreed that fresh Patents, Leases, Grants, &c. "shall be made out, to all the Possessors of Lands, Houses, &c. "within the present disputed, and by this determined Boundary, "without any Fines or Arrearages of Rent, whatsoever, pro- "vided they become Tenants to the respective Provinces, subject "to the Rents and Reserves common to the Land-holders of the "respective Provinces, subject nevertheless to usual Fees to the "proper Officers of the said Provinces, for the taking out of any "Patents for the Lands and Tenements they at present are

"possest of". And to the Truth thereof this Deponent can the better depose, having the said Original Paper-Writing or Notes, in this Deponent's Custody or Possession, the same having been lately found, and this, with what will best and further appear in and by the said Paper-Writing or Notes, and the said produced Plan or Map, whereto this Deponent refers, is all he can materially depose to this Interrogatory, to his present Remembrance.

Mr. Sharpe expressly swears that he was not privy to the Commencement of the Treaty, and that he does not know at whose Request it began. (That last is a Fact which shall be cleared up by and by.) And it's observable that they would not examine Serjeant Wynne, who swears he, as my Lord's Council, was present, at my Lord's Request, at several Meetings in order to try to agree. Mr. Sharpe goes on, That he was only present at two Meetings, and those in July or August, 1731, after some Progress had been made in the said Treaty: That, at the said meeting, which he was present at, the principal Discourse which past was, in relation to the bringing the Treaty to a Conclusion, and agreeing upon the Heads thereof, and giving Instructions for carrying it into Execution, by directing proper Deeds or Instruments to be prepared.

He says, that he apprehended and understood that the Treaty began at the Plaintiffs Request, but that he does not know it; of which hereafter.

He says, that at those Meetings which he was at, the Plaintiffs seemed to be better prepared for such Meetings than my Lord was. Whose Fault was that, if it really was so? That my Lord, at those Meetings, seemed to have no other Information of the Matters, then under Consideration (and he has told us what they were) than what arose from his, and our Maps, and the Information he received from us, On which my Lord seemed principally to rely: Be it so, If he received his Map, from his own Agent, as, after 9 Months Consideration of the Draught he owned under his Hand and Seal, and still swears he did; and had had it many Years by him, as he, even now, swears positively he had had it; and if, over and above all this, his Map was exceedingly just and true, precisely in the very Part where he pretends 'twas grossly false; what other Information could he have had? Or, if further Information was still to have been had, what hindered his getting it? Two Persons, Paris and Abraham Taylor, believe he sent the Substance of the Draft over to America, during the nine Months that the Draft itself was under his Consideration;

And the reason of their Belief thereof arises from what he himself declared at two several Times, viz. on 29th March, 1732, when he gave over that material new Clause about the intersecting of navigable Waters, and again on 10th May, 1732, when he executed the Articles; And they are strongly corroborated in this their Belief by the Defendant's Witness, who says, now, that those Articles if executed, would cut off navigable Waters. Was my Lord ignorant of that? No. His new Clause delivered on 29th March, 1732, provides expressly for that very Case, and for nothing in the World but that: So that my Lord, long before the Draft was settled, either knew the Situation of his Province, or had been informed from Maryland of it. And that Clause, as he then declared, his People insisted on, and therefore, he must have it; so that there is all the Proof, that we could give of his Actions, that he did (additional to all his other Information) send the Agreement, or Substance of it, over to his own Agents in Maryland, for further Information still, during the nine Months he had the Draft of it before him. And as to what seemed to Mr. Sharpe at those Meetings, it was an untrue Seeming or Appearance, for, besides all this, my Lord himself, and another Witness of ours, prove he really had other Information, long before; for they have examined a Witness, Mr. Preston, to prove that Mr. Logan had been, heretofore (in the Absence of the late Mr. Penn from Pensilvania, and afterwards, in the Infancy of the now Plaintiffs) the great Manager and Agent for 30 Years together from 1701 to 1732, in all the Pensilvania Affairs. He was so, and what does he swear? Why, that in the Year 1724, my Lord Baltimore had, before him, the fairest and largest Manuscript Draft of the Peninsula that he had ever seen, and that it had many different Lines drawn upon it East and West; And what does my Lord himself now swear, in his own Answer, about this Map? Why, that he took it, as the first that came to hand. The first! why then, from the 3d of June, 1731, to the 10th of May, 1732, he had Time enough to have lookt for the second, or some of his others.

So that, whatever seemed, my Lord really had other Information; nor does Mr. Sharpe pretend that he had not. for, hitherto, he only says that, at those two particular Meetings in July or August 1731, my Lord seemed principally to rely; but what had he before, or after, down to 10th May 1732?

And besides, what signified it what he relied on, just then,

when they were ordering Deeds? The Agreement, and the Places where the Lines were to be run, had been before agreed, and they then met to direct the proper Deeds and Instruments. Not to settle what should be the Bounds. And my Lord had then brought a Sheet, all of his own Hand-writing, of particular Directions, from what Places, how far, and in what manner, every one of the lines should be run.

What Colour of Reason or Foundation, does Mr. Sharpe assign for his Belief that my Lord was then, as to his own Knowledge, an entire Stranger to, and wholly unacquainted with, the Situation of his Province, whereof he has been Proprietor ever since the Year 1715? None in the World. The Reason of the Thing is against him, a Province, out of which an immense Revenue, of near 8000*l*. Sterling per Annum is serewed, was worth his informing himself about; especially as it had for 50 Years before been in perpetual Contest, and as there had been two Applications about it, to which this present Lord Baltimore himself was a Party, viz. in 1717, and again in 1725, by the Earl of Sutherland; and this Lord himself had made one temporary Agreement, with Hannah Penn, before, about it, in 1723. And, whoever it was first set on foot the Treaty, yet, my Lord agreed to meet, and did meet, about a perpetual Agreement; And yet, contrary to the Reason of the Thing, Mr. Sharpe believes: But he believes contrary to the Evidence of the Thing also; for Mr. Logan swears, and my Lord, plainly enough, also swears, that my Lord, had other Maps long before; In which Case (let who will believe it) yet my Lord could not be an entire Stranger, or wholly unacquainted with the Situation of his own Province.

A Person may repeat a Gingle of Words till he loses himself, which is the Case here; Mr. Sharpe, at first, said my Lord seemed principally to rely on the two Maps and the Plaintiffs Information. And, upon a second Repetition of the Words, he makes them a little stronger, that my Lord seemed entirely to rely on them. But which could not be true, (that he did so entirely rely) however it might seem to Mr. Sharpe, as before observed.

Mr. Sharpe, very civilly and respectfully to his Client, says, he believes that Map was drawn in Pensilvania, sent from thence to my Lord's Agents in Maryland, and by them sent to my Lord; (so that he, himself, believes my Lord's Agents were the Persons that sent that Map to my Lord, which is something) and he adds further, his Belief, that the said Map was very incorrect and faulty; and he gives his Reason now, for all this

Belief; for, my Lord has told him so. I fancy, when he has read the Proofs, and seen how grossly my Lord's Answer upon Oath is falsified, in a great Number of Particulars, he will not be so civil as to believe what my Lord says, another Time.

Mr. Sharpe says (according to his Remembrance and Belief) there were Concessions mutually made on each Side; why so my Lord says in his Answer; but, tho' we most precisely interrogate him by our Bill, and particularly demand that he should instance what one Thing we insisted on, that he agreed to? Or what one single Thing which he insisted on, we did not agree to? We are so unfortunate, that neither from my Lord, nor his Solicitor, can we obtain the least Answer what those Concessions were? And Mr. Sharpe must forget, (he seems to have forgot, even whilst penning his Deposition) that the Meetings he was at were to give Orders for preparing the Deeds, so that the Bounds and Limits had been all agreed to and settled, before ever he was called into the Matter; and that was not the Time for making Concessions to each other, upon the Merits of the Agreement, when Mr. Sharpe came in to the Affair; and, if he does not mean Concessions in that Sense, he at best but trilles.

As to the rest of Mr. Sharpe's Deposition it confirms that of Paris, and particularly as to my Lord's own drawing of the Lines upon his own Map, his giving a Paper of Notes, &c.

There's one Observation more to be added; Mr. Sharpe says that Paris seemed more pressing to forward the Agreement than my Lord, and so says Paris also; and there were two Reasons for it. 1. My Lord himself, as it is plain, wanted Time, to hear from America. And 2. Paris, by Experience, would advise every one, who has any thing to do, in Concurrence with Mr. Sharpe, to do it all by themselves, if they desire it should be done speedily.

The Paper of my Lord's Notes, of his own Hand Writing, now (happily for us) brought to light again, does most grossly falsify my Lord's Answer. We had most particularly in our Bill charged that Paper, and, speaking of the extravagant Pretension of his Commissioners, that the Circle was only to be two Miles from Newcastle, we had charged that it appeared, by his own written Notes or Proposals, in two several Places of the same, that he himself, not only agreed, but proposed, under his own Hand, that the Circle should be twelve Miles distant from Newcastle, and, a second Time, 12 Miles from Newcastle. He has the unusual Daring, notwithstanding so precise a Charge, to deny, upon his oath, Fol. 362. that he ever meant or intended that the Circle should be such an one as that the Semi-Diameter should be twelve Miles. I never saw so gross a P—y; I must now call it by that flat Term.

And if Mankind are at Liberty to swear away thus their own Agreements, and their own Hand Writings, there is no such Thing as dealing with them.

John Sharpe, [Lib. F. Fol. 14. Int. 6. Fol. 45.]

Saith that he hath looked upon the said Parchment Writing, now also produced, marked with the Letter (G), and purporting to be Articles of Agreement, between the said Defendant and the Plaintiffs, and that this Deponent was concerned for the Defendant, as his Sollicitor, in preparing and settling of the Draft of the said produced Parchment Writing or Articles of Agreement marked (G); but saith that he this Deponent was no otherwise concerned in forming and making the said Plan, or Map, printed or stamped on the same, than by once going to the said Mr. Senex, the Person who was agreed upon by all the Parties to engrave the same, to let him know that the said Lord Baltimore desired that he would prepare the same, as well on his the said Lord Baltimore's Behalf, as on Behalf of the Plaintiffs; and that, to the best of this Deponent's now Remembrance and Belief, this Deponent attended the said Mr. Senex, but once, in relation to the engraving the said Plan or Map; and that he the said Mr. Senex was, principally, attended thereon by the said Mr. Paris, the Plaintiffs Sollicitor, on Behalf of the said Plaintiffs, as this Deponent believes

So that he was with Mr. Senex twice, at least; once, to desire him to prepare the Map. And, at least once, in relation to the engraving it.

He does not mention a Word about Mr. Senex's opinion, one way or other; tho' my Lord, in his own Answer, admits Mr. Senex did give his Opinion in Writing upon the Draft of the Articles.

Mr. Sharpe likewise omits to mention his own laying the Draft before Serjeant Wynne.

The same, [Int. 7. Fol. 48.]

That the first Draft of the said produced Articles marked with the Letter (G) was prepared on Behalf of the Plaintiffs, by the said Mr. Paris, their Sollicitor, as this Deponent verily believes; the same having been delivered to this Deponent by the said Mr. Paris, as prepared by him; and this Deponent saith that there were several Alterations made, in the said Draft, after the same was so prepared by the said Mr. Paris as aforesaid, some of them by the Plaintiffs or their Agents, and others by the Defendant or his Agents; [in the plural Number] but this Deponent saith that the Clause, in the said produced Articles, relating to the making the said Agreement void, if, for want of a sufficient Quorum of the Commissioners not attending from time to time, the Lines, thereby directed,

were not run, within the Time thereby limited, and, for the Parties, whose Commissioners made such Default, forfeiting 5000*l*, was one of the said Alterations, and was, to the best of this Deponent's now Remembrance and Belief, proposed by the said Mr. Paris, on the Plaintiffs Behalf, and agreed to by the Defendant, as what appeared to be for the mutual Benefit and Advantage of both Parties; and saith that, to the best of this Deponent's now Remembrance and Belief, there was not any Objection made, on either Side, to the said Alteration or any material Objection to any other of the Alterations, that were proposed by either Side, to be made to the said Draft; all the Alterations which were so made, being considered, by each Side, to the best of this Deponent's now Remembrance and Belief, reasonable and necessary.

Here ends Mr. Sharpe's whole Account of the Treaty, and the Articles of Agreement.

But he is succeeded by a Gentleman who really knows less, but speaks more, by a great deal, than Mr. Sharpe.

Samuel Ogle, [Lib. G. Fol. 218. 1st original Int. Fol. 218.]

That he has been well acquainted with the Defendant in this Cause upwards of 20 Years, and saith that he hath seen the Plaintiffs in this Cause once, but is not well acquainted with them.

He is sworn to speak the whole Truth, so I suppose he saw the Plaintiffs but once, and we shall see how much he knows their Hearts, at first Sight of their Faces.

The same, [Int. 13. Fol. 219.]

That the Defendant, the Lord Baltimore, about the Year 1730, frequently mentioned to this Deponent, that his Governor of Maryland had many Complaints to him, of Encroachments being made on the Province of Maryland, by the People of Pensilvania, countenanced by the Governor of Pensilvania, that the Defendant was resolved to take some legal Course with the Proprietors of Pensilvania to put a stop to the said Encroachments, since they would not do any thing by fair means; (*1.) and, some time after, this Deponent went to Ireland, and staid there some time, and after his Return from Ireland, and in the Year 1731, enquired of the Defendant concerning his Suit, relating to the said Affair? Whereupon, the Defendant, then, informed him, that the Proprietors of Pensilvania had applied to settle the Disputes aforesaid amicably, by a Treaty; and that, in the Year 1731, this Deponent casually meeting the Defendant, he acquainted this Deponent that he was, that Evening, to meet the Proprietors of Pensilvania, at the Bedford Head Tavern, near Covent Garden in London; and the said Defendant then desired this Deponent to be with him, at the said Meeting; and

saith that he was present, at the said Meeting, and that the Plaintiffs and the Defendant were also all then present; and that, at the said Meeting, it appeared to this Deponent, that the Defendant was very ignorant of the Subject Matter in Dispute; and that the Plaintiffs took great Pains to persuade the defendant that they were equally ignorant and that, on the defendant's shewing his Ignorance, in relation to a Map or Plan of Maryland and Pensilvania which lay on the Table, one of the Plaintiffs said, my Lord, we are all ignorant alike, (*2.) And what we do is a good deal in the dark, but it may be as well for one Party as the other, and what we are doing is for the sake of Peace, (*3) or Words to that Effect; And this deponent further remembers that, at the aforesaid Meeting, the Plaintiffs insinuated to the defendant, that they, the Plaintiffs, were sensible, what they were doing, would be contrary to the Opinion of their, the Plaintiffs. Friends in Pensilvania, and Particularly to Mr. Logan, and that, they were told, some of the richest and best peopled Lands in Pensilvania would, by the Treaty they were then upon, fall to the Defendant; (*4.) All which he, the more particularly remembers, because, it made a great impression upon him at the time, and caused him then to think that the Plaintiffs were great Masters of the Art of Dissimulation (*5.) And, when he came to America, and found how disadvantageous a Bargain the defendant had afterwards made, and the great Rejoicings in Pensilvania, (*6) upon the Account of the Agreement entered into between the Plaintiffs and the Defendant, this Deponent often reflected on what passed at the Meeting aforesaid, and recollected the several passages of the Dissimulation of the Proprietors of Pensilvana, in the Transaction aforesaid. And what made this Deponent further reflect upon what passed at the Meeting aforesaid was, upon reading the Copy of the Bill exhibited in this Cause, he found it therein insinuated, as if the Defendant was assisted by this Deponent his Governor in the making of the Articles in the Bill aforesaid, which really is untrue; for that this Deponent neither did, nor could, give any Assistance to the Defendant in the Affair, because he then was really unacquainted with the Nature of the Dispute, and was not present at any other Meeting, than that before mentioned, as he can recollect: and further saith, that he cannot recollect any other Substance of the Proposals, Objections or Observations, which were made use of at the Meeting aforesaid, than what he has before deposed and declared.

The same to the last Gen. Int. Fol. 244.]

That he knows (*7) the Defendant, at the time he entered into the Agreement mentioned in this Cause, was wholly un-

acquainted, and ignorant, of the Boundaries of the Provinces of Maryland and Pensilvania, and every thing (#8) relating thereto, and was very ill informed thereof (#9) from Maryland.

1. This Person, whatever he is for a Governor, is yet a very bad Witness for my Lord; for he knows abundantly too much for any mortal Creature to be capable of knowing. But the Heat of his Zeal hath transported him beyond his Discretion, and he has, unwittingly, added to our Proof, that the Treaty was began at the Request of my Lord. We charge by our Bill that it was so. My Lord utterly denys it, and says we solicited him to it. Nay, he is profuse in the Use of his Words, we frequently, repeatedly, and earnestly made Applications to him; but how? Where? When? By what means? Did we apply by any Friend to him, who was the Person employed? Did we write any Letter to him, where is the Letter? my Lord begs to be excused from telling any one Particular, or proving any one Particular, of our frequent, repeated, and earnest Applications to him. (Just in the same manner as about the Concessions; which he tells us also, in general Terms, that he made to us.) He says we desired the Treaty. But Paris proves that my Lord began it. and he gives the Particulars of it, and withall a very strong Circumstance for his remembering it, as he considered that that Agreement with my Lord, might contribute to another Agreement, he had been long laboring to bring about, for his then Client William Penn, the Heir at Law. But this is, yet, only one Witness against my Lord's Answer. But now, how strongly does Mr. Ogle confirm it? He swears, my Lord told him, that we would not do any thing by fair means, and therefore, my Lord was resolved that he would take a legal Course, and so, I suppose he did, for, afterwards, Ogle enquired of him, what was become of his suit? Now, my Lord could not say we would do nothing by fair means, unless he had tried fair means. And that is the very Account, which Paris gives; That my Lord first desired the Treaty; That, at the two first Meetings, the Plaintiffs thought his demands too high, and would not agree to them; That the Treaty broke off thereupon, and my Lord immediately, on 1 July 1731, presented a Petition to the King. So here are, now, two Witnesses that my Lord began the Treaty. Nor will the Matters rest here, (Paris being a little more cautious of what he swears to, than the Defendant seems to be) my Lord in his Answer can't remember the particular Days he met, but admits several Meetings were had between the 11th June, 1731, and 10th May, 1732. Let us next see the Petition which my Lord presented to the King, on the first of July, (when, as Paris says, the Treaty was broke off) and that Petition, being a written Paper, will not lie for either Side.

Why his Petition sets out the Charter of Maryland to his Ancestor, and the Charter of Pensilvania to Mr. Penn; That several Disputes had arisen, about the Northern Bounds of Maryland, and that frequent Application had been made to the Crown, to ascertain the same, in the Years 1685, 1708, and in 1720, and divers Letters and Orders had been sent from the Crown, for that purpose, but they had hitherto, had no Effect: That, by Reasons of those Disputes, very great Numbers of his own Tenants refused to pay any Rents, or submit themselves to his Government, which occasioned frequent Disputes; and now, upon this Case, which he made, what was his Prayer? Why, that the King would order the Pensilvania Proprietors, to join with him, in settling the said Boundaries; and, if they refused to comply therewith, or that the same should not be settled within a Twelve month from that time, that then, the King would hear the Matter in dispute, and make such Determination as to him should seem meet.

I think it is impossible to give a stronger Proof than this, that it was my Lord that wanted and desired the Agreement, for those very strong Reasons which he gives in his Petition, and could not then get us into his Terms, and therefore petitioned the King, to order us to agree, in order to terrify the Plaintiffs, by the Expence of a new Application in Council. into an Agreement, he so much wanted; and, of which his new petition (as Paris says) he immediately sent Mr. Penns a Letter, that he had made such an Application, which answered his Design and brought round the Meetings again.

But, even this is not all our Proof; for what says Serjeant Wynne, my Lord's standing Council for his Maryland Affairs? Why he says this; That he was requested, by the Defendant, to meet the Plaintiffs, or their Agents, to try if they could come to any amicable Agreement, touching the Boundaries in Dispute, That he was, accordingly, present at several Meetings, and the Parties did, at length, come to some Agreement; He says that this was requested of him, by the said Defendant, as near as he remembers, about May, 1731 or 1732. And it must be May, 1731, for my Lord himself owns the Draft of the Agreement was prepared, and delivered over, 9 Months before May, 1732, namely, in August, 1731.

So that, here is a pretty good Outset. Three Witnesses, of which my Lord's own Council (whom he did not dare to examine) and his Governor, are two, and my Lord Baltimore's own written Petition to the King, to falsify the first Fact in his Answer, which relates to the Agreement, and to prove that the Treaty really was begun at his own Request.

And, if this is so, there are a Number of trifling Incidents

that fall along with this Part; for if he would desire, and at last oblige us, (by a new Application in Council the Expence whereof we had declared a Dread of) to come into an Agreement, shall he now say, he had not lookt into all his Maps, or he did not know his Right?

2. Mr. Ogle makes the Plaintiffs to have said, that they were as ignorant as my Lord. They have proved that they must be so; for it is in Evidence that they were never in America before the Agreement, and they could only have Maps from their Agents, as (now it's proved) my Lord had from his.

3. He also makes the Plaintiffs to have said, that what they were agreeing to, was for the sake of Peace. And if you please to recollect what a very large District we have granted to my Lord, beyond the most extravagant of any his former Pretensions, it must plainly appear that it was for the Love of Peace, or through Inability for War (and indeed both those were their Reasons) that they should make an Agreement, so very disadvantageous to themselves.

4. He makes the Plaintiffs to have said, that they had been told, that some of the richest and best peopled Lands in Pensilvania would, by that Agreement, fall to my Lord. They certainly were told so, and did say they were told so: And has any Mortal contradicted them; I am sure I see not a syllable to the contrary. And heartily wish my Lord would have mentioned that Fact in his Answer, and so have put it in Issue; In which Case, we should have, most abundantly, proved that our Town of Nottingham (the most valuable Spot in our whole Province, (which Mr. Logan mentions to have been so cautious in granting out) is, by this Agreement, through the Misinformation of our Surveyor who laid out that Tract, really fallen on my Lord's Side of the Line, into his Manors of New Munster and Talbot, as we now find to our Sorrow, upon running the Line for temporary Jurisdiction which was ordered by the King in Council, pending this Suit.

5. Mr. Ogle, it seems, then, at first sight, thought the Plaintiffs great Masters of the Art of Dissimulation: But why so? He swears he could not help my Lord in the making of the Articles (which, by the way, he was never charged with; that being a wilful Mistake of his) for that he himself then was really unacquainted with the Nature of the Dispute (those are his Words); How then could he tell how much, or how little, the Plaintiffs knew; whether they said true, or dissembled; whether they did know a great deal, or were, as they pretended to be, really ignorant, of Matters, relating to a Dispute, which this Man swears he himself, did not so much as understand the Nature of?

6. He does not expressly say, that there were Rejoicings in Pensilvania at the Agreement (nor no Mortal ever heard of any such thing) but, when he found the great Rejoicings in Pensilvania, why then he reflected so and so.

7. We come now to remark on three Facts, not believed or apprehended by this Governor Ogle but sworn to, absolutely and positively, in the strongest manner that Words can express: He knows the Defendant (and when too? why at the Time of entering into the Agreement, which was almost a Year after the Treaty) was wholly unacquainted and ignorant of the Boundaries of the Provinces of Maryland and Pensilvania, and of every thing relating thereto, and was very ill informed thereof from Maryland. If this were true, he makes his Principal an Idiot and a Natural; but this rash Governor, out of his Over-Zeal for his Principal, and to curry Favour with him to continue in his Government of 1500*l.* per Annum, has sworn positively what no Human Creature can know, or can possibly swear, with an honest Conscience. And it happens, unfortunately for Governor Ogle, that he has sworn, what he had not so much as a Chance to have it happen to be true. but what is absolutely false, and proved so most notoriously. For, to take one or two strong Instances only, (and the first of which came manifestly from Maryland too) my Lord owns he delivered over his new Clause, about the Line which run up the Peninsula South and North's intersecting of Navigable Waters; did he, by Chance, or Accident, draw that new Clause, of his own Hand, or was it thro' some Acquaintance and Knowledge, of the Boundaries, which was one thing relating to the Bonndary? But here is a stronger Instance, and an earlier Instance than that, that he most certainly did know some thing relating to his Boundaries; for here are his own written Proposals and Descriptions under his own Hand, containing a whole Sheet of Written Directions, where, and from whence, and to what Parts, and how, all and every one of the Bound Lines should run, which are absolutely impossible to have been drawn up by a Person wholly unacquainted and ignorant of every thing relating to the Boundaries, which, yet, this most rash Witness swears positively that my Lord was; so that one must be very precise with this Witness, and his Master too, who can thus swear away what is under their own Hand Writings.

**William Barnes, the Defendant's Witness only, [Lib. G. fol. 181. Ind. 14. fol. 183.]*

That he is acquainted with several of the Places named in the printed Plan, but knows nothing of the Situation of Cape Henlopen; saith he hath reason to believe the Plaintiffs were privy to some Mistake in the Map or Plan, on which the Arti-

cles in Question in this Cause were founded, before the Execution of the said Articles; and the Reason of such his Belief was, that he being, with some of his Neighbours, (viz. John Holiday and James Morris) in Company with Messrs. John and Thomas Penn, two of the Plaintiffs, at Philadelphia, some time after the arrival of the said John Penn, a Conversation arose, concerning the Articles of Agreement aforesaid, in which Conversation this Deponent acquainted the said Plaintiffs, that he had heard, in Maryland, that the Lord Baltimore was imposed upon, by some Mistakes or Errors in the said Plan; whereupon the said John Penn replied, he did not know, but it might be an unjust Plan. but if it was, it was a Plan of his the Lord Baltimore's own chusing; that they, the Plaintiffs, offered him a Plan, which they believed to be just, and which he had under his Consideration, some time, but the Lord Baltimore refused to take the Plan the Plaintiffs offered him, and took one, which he supposed, was procured by the Lord Baltimore's Friends.

This Witness has proved his holding Lands under the Plaintiffs in the Lower Counties; and proves nothing, from this, which fell, many Years after, in private Conversation, from Mr. Penn, but that Mr. Penn said he did not know but my Lord's Plan might be unjust. Nor he certainly, did not, but was really as ignorant, as he pretended, and could not possibly know any thing of the matter, having never been in America, to gain any Knowledge, unless his Birth, and staying there to a Year and half old, could have given it.

But even this poor Account is very much varied and softened by the next Witness my Lord examined, who was present at the same Discourse with Mr. Penn, and relates it in a fairer manner.

John Holliday, the Defendant's Witnesses only, [Lib. G fol. 170. 9th add. Int. fol. 176.]

That he hath heard John Penn one of the Plaintiffs, say, that, after the Draft of the Original Agreement made between the Parties in this Cause was drawn, the Defendant, the Lord Baltimore, had the said Draft a long time, for his Perusal; and he this Affirmant was present, when one William Barnes mentioned to the said John and Thomas Penn, that, it was suggested, there was some Mistake, in the Plan or Map to the said Articles; to which the said John Penn then said, if there was a Mistake, it was taken from a Plan or Map done by the Lord Baltimore's own People of Maryland; and does not remember to have heard the said John Penn say any thing more of the Truth, or Falsity, of the said Map or Plan.

38.

Now we come to the Defendant's Proofs of what passed during the Time the Commissioners met in order to have executed the Articles.

Samuel Ogle, the Defendant's Governor, [Lib. G. fol. 218. Int. 15. fol. 231.]

That he was one of the Commissioners appointed on the behalf of the Defendant, to settle the Boundaries between the Province of Maryland, and Province of Pensilvania, pursuant to the Agreement in question, and that the Persons appointed Commissioners with this Deponent, on the Defendant's behalf, on that occasion, were Charles Calvert, Philemon Lloyd, Benjamin Tasker, Matthew Tilghman Ward, Richard Bennet, and Michael Howard. Saith that he is no way interested in the Event of this Cause, nor shall be any ways prejudiced, or benefited, by the Determination thereof; that this Deponent, or any other of the Commissioners aforesaid, to his Belief or Knowledge, (before the Doubt arose amongst the Commissioners concerning the Centre and Dimensions of the Circle to be run) never did advise, persuade, intreat, desire, or by any means endeavour, to prevail upon the Defendant to fly from, or endeavour to avoid, the Agreement in Question in this Cause; nor make any Proposals, Declaration or Promise, by word of Mouth, or in writing, or otherwise to the Defendant, in order to influence or induce him, to evade the said Agreement; and that this Deponent believes he often mentioned to the said Defendant the Disadvantages arising to him, by the said Agreement: but, whether, before the Doubts arose about the Centre and Circle, he is not certain. That he never had, nor does not know of any Conference that the other Commissioners ever had, with the Defendant, (before such Difference in Opinion arose amongst them and the other Commissioners) in order to contrive or consider how to evade the said Agreement, or for any such like purpose. That he did not propose, or receive, any Advantage, to himself, or knows of any Advantage, that any of the other Commissioners proposed, or received, to themselves, by the Agreement not being carried into execution. Saith that he had a Warrant for about 5000 Acres of Land, within the said Province of Maryland, during the time of the Commission for carrying the said Agreement into Execution was in force, which had not been taken up: but knows not that any other of the Commissioners had Warrants to take up any Land. And this Deponent apprehends that the carrying the said Agreement into Execution would have been an Advantage to this Deponent, in laying out of the Land in the Warrant mentioned: because, by that means, the Land,

upon the Line, would have become more valuable, and the Warrant might have been disposed of to greater Advantage; whereas, because the Lines were not run, no body cared to meddle with the Lands in dispute, but they were chiefly inhabited by loose idle Persons, who paid neither Rent or Taxes, to either Government, and that the Disagreement of the Commissioners about the Sense of the Articles in question, was the Occasion of their not being carried into Execution, as this Deponent apprehends.

*Benjamin Tasker, the Defendant's Witness, [Lib. G. fol. 290.
Int. 15. fol. 293.]*

Saith he was one of the Commissioners appointed on the behalf of the Defendant for settling the Boundaries between the Provinces of Maryland and Pensylvania, pursuant to an Agreement between the Plaintiffs and Defendant, and that his Excellency Samuel Ogle Esq; Charles Calvert, Philemon Lloyd, Michael Howard, Richard Bennet and Matthew Tilghman Ward Esqrs; were joint Commissioners with this Deponent on that Occasion; and that he is no manner interested in the Event of this Cause; that neither he, or any other of the said joint Commissioners with him, or any other Person, to his Knowledge, at any Time (before the Doubt arose among the said Commissioners at their Meetings, concerning the Center and Dimensions of the Circle to be run, in pursuance of the Agreement aforesaid) did advise or perswade, or by any other means, endeavour to prevail upon the Defendant, to endeavour to avoid the Agreement, in question, in this Cause, or make any Proposal, Declaration, by Word of Mouth or in Writing, to the Defendant, in order to influence or induce him to evade the same, or represent any Advantage, or Disadvantage, that would arise therefrom to the Defendant; that he neither proposed or to himself, and does not know that any other of the Joint-Commissioners appointed with this Deponent aforesaid did propose or receive, any Advantage, to themselves, by the Agreement's not being carried into Execution. That he had no Warrant for taking up Lands within the Province of Maryland aforesaid during the Time the Commission aforesaid was in Force, but hath heard, that the present Governor of Maryland, and Charles Calvert aforesaid, each had Warrants for about 5000 Acres of Land; which he has likewise heard were located, during the Commission aforesaid, very far to the Southward of the Disputed Bounds, upon Lands of very little Value. That he knows of no other Cause, that obstructed the carrying the Agreement aforesaid into Execution, but the Disagreement of the Commissioners upon the Construction of the Circle aforesaid.

John Ross, the Defendant's Witness only, [Lib. G. fol. 303. Int. 15. fol. 303.]

That he was one of the Commissioners appointed by the Governor of Maryland on the behalf of the Defendant, in the Room of Charles Calvert Esq., deceased, for executing the Articles in question in this Cause, and that his Excellency Samuel Ogle, Matthew Tilghman Ward, Benjamin Tasker, Michael Howard, Edmund Jennings and James Harris Esqrs; were Joint Commissioners on that Occasion, with this Deponent, and saith that he is no manner interested in the Event of this Cause, and that he this Deponent never did, nor does he know that any other Person did, advise or perswade the Defendant to endeavour to avoid the Execution of the Agreement aforesaid, nor does he know of any Meeting had, by any of the Commissioners, with the Defendant, for that purpose; and that he neither proposed, or received, any Advantage to himself, nor does he know that any other of the Joint Commissioners with this Deponent proposed, or received, any Advantage to themselves, by the said Articles of Agreement's not being carried into Execution; saith that he had no Warrant to take up Lands in the Province aforesaid, during the Time the Commission aforesaid was in Force, but his Excellency the Governor aforesaid had, to the best of his Remembrance, during that Time, a Warrant to take up about 5000 Acres of Land, in the Province aforesaid, and that the same was, as this Deponent has heard, located in Ann Arundel County, about 18 Miles from Annapolis aforesaid, and that the carrying the said Agreement into Execution, would have been no Disadvantage to the Effect of the said Warrant: and that he believes the Difference in Judgment among the Commissioners on the behalf of the Plaintiffs and the Defendant, about running the Circle round Newcastle, prevented the carrying the Articles in Question into Execution.

The Defendant had, in all, ten Commissioners, of which he chose to examine only two of those seven who were originally appointed, and Ross for a third, who was only appointed at the latter End of the Affair, and met on 3d September, 1733, for the first Time.

All of them swear, on my Lord's own Examination of them again, that the reason, why the Articles were not carried into Execution, was, the Difference in Opinion between the Commissioners.

So that the Pretence of waiting an Hour, on 3d February 1732, for our Commissioners, is out of the Case.

It's very observable that Governor Ogle swears he has read the present Bill.

In that Bill we had charged, generally, that my Lord and

his Commissioners did contrive to avoid executing the Articles.

And surely, Hugh Jones's own Account, of my Lord himself ordering him to post up, on the Borders, and to send to his Friends, in the Lower Counties, the printed Advertisement of 21 March 1732, pending my Lord's own renewed Appointment of the 15th of February for the Commissioners to meet at Joppa on the 7th of May then following, amounts to Demonstration.

Well, but Mr. Ogle affects to answer the Charges in the Bill; wherefore, only himself and Tasker, two of the seven original Commissioners, are to be examined; with the Addition of Mr. Ross, who came in, as aforesaid, quite at the End of the Affair.

But what a Contrast there is, between those two old Commissioners who were in the Secret, and Mr. Ross, who came in late, and was not in the Secret?

Mr. Ross denies generally, and honestly, that he knows of any such Contrivance at all.

But what say Ogle and Tasker? Why they most absolutely, deny, at first, any such Contrivance used before the Difference arose between the Commissioners about the Center and the Dimensions of the Circle. Why that happened in October, 1732. So that here is a Negative pregnant.

But it does not rest here, for, in the same Breath, Mr. Ogle owns, he did often mention, to the Defendant, the Disadvantages arising to him from the Agreement. but whether he did so, before those Doubts arose about the Center and Circle, he is not certain.

Again, he denies, in the self same manner, any Conference with the Defendant, in order to consider how to evade the Agreement, at any Time before the said Doubts arose. Why it was impossible he should have any before; for the Doubts arose in October, and my Lord swears he did not arrive there till 14 November. But is this an answering of the general Charge in our Bill?

Well, we had again charged that my Lord's Commissioners, whom he appointed to execute the Articles, were possessed of Warrants, at large, for great Quantities of Land. My Lord denies that he knows, believes or ever heard, of any such a Matter.

Yet, with this short Examinations, it comes out, affirmatively, that Ogle and Calvert, two of his Commissioners, had, each of them, Warrants for 5000 Acres, or more, during the Commission. And I suppose that's the Reason they examined no more of their Commissioners.

I observe Mr. Ogle (who must best know) does not pretend that his Warrant is located; but the two others are made to say, that they have heard (not that they believe it) that Mr. Ogle's Warrant is located.

Mr. Ogle apprehends (which is not a legal Word for a Witness upon Oath) it would have been an Advantage to him, to have had the Articles executed; for then the Lands, just upon the Line, might have been more valuable; but nobody else can apprehend so, even if such Lands had been vacant, which they are not; for their own Witnesses tell us they are surveyed already, into large Manors, New Munster, and Talbot Manors, which extend part of them above the Line. And surely, the larger Field a Man has to chuse out of, the better Land he may help himself to, especially, in the case of this Governor, who, so gravely contended, that wherever a Maryland Warrant is located, the Place *ipso facto* becomes a Part of Maryland.

Mr. Ross, in endeavouring to add to, takes off from, the little force there was before; for he says that he has heard that executing the Agreement would have been no disadvantage to the Effect of the Warrant; why, no to be sure; the Effect of the Warrant was, to grant him 5000 Acres at large. And that Effect is equally answered, by laying them out in one Place, or in another. So that, it is plain, these People are quibbling, and disguising the Truth, instead of speaking out fairly and openly.

39.

Hugh Jones, of Maryland, Clerk, the Defendant's Witness, [Lib. 4. fol. 4. Int. 8. fol. 13.]

Says the Paper Exhibit No 2. is a Copy of a Question and Answer, [about the Circle] and that his Name and Mr. Rumsey's, subscribed to the Original of the same, were of their Handwritings; and says that he and Rumsey were appointed, on Friday 2d February, 1732, to attend the Governor of Maryland and the other Maryland Commissioners; and the said Governor of Maryland, the same Day, acquainted the Deponent there had been Disputes between the Commissioners, on each side, concerning the Terms mentioned in that Question, and that they had agreed to take the Opinion of Surveyors on each part. And, then, he proposed the said Question, to be answered by the Deponent and Rumsey, which they did, in the manner mentioned in the Exhibit. The Original of which Exhibit was, the next Morning, delivered to the Governor of Maryland. And the next Day, being Sunday, the Deponent was obliged, and ac-

cordingly left the Commissioners on Saturday, to attend his Cure in Maryland.

William Rumsey, of Maryland, the Defendant's Witness, [Lib. G. fol. 129. Int. 8. fol. 134.]

Also proves that this is a Copy of the Question put to, and the Answer signed and given by Mr. Jones and himself, and delivered to the Governor of Maryland on 3d February. And says he also, on that Day, returned homeward, but does not remember any particular Business required it. Says he was acquainted with Robert Charles, and has seen him write, and believes his Name subscribed to the original Paper was his Hand.

Note.

How very natural it would have been, for either of these two Gentlemen, to have said one Word that he believed, or he judged, or thought, that was a Right Opinion on the Question; but they do not say a Syllable of that sort, and indeed, it was a most shameful Answer they gave.

Benjamin Tasker, of Maryland, the Defendant's Witness, [Lib. G. fol. 290. Int. 8. fol. 291.]

Proves the said Exhibit is a true Copy, and that he has examined and compared it with the Original, and he believes the Name of Robert Charles, subscribed to the Original of it, was of Charles's Hand writing, who was one of our Commissioners.

John Ross, of Maryland, the Defendant's Witness only, [Lib. G. fol. 303. Int. 8. fol. 304.]

Proves also that the said Exhibit is a true Copy, which he has examined and compared with the Original.

So that here is—great Caution to prove only a Copy of this curious Paper, which the Governor of Maryland keeps the Original of, and does not produce, and which the two Persons who framed that Original, are ashamed to say that they themselves thought to be a true or right Answer to the Question proposed to them about the Dimensions of the Circle; altho' they swear to their Opinion about the Extent of my Lord Baltimore's Charter.

40.

My Lord cross-examined two of our Witnesses to prove the Extent of Newcastle Town.

Elizabeth Morris, [Lib. II. fol. 26. Int. 6. fol. 28.]

She has been at Newcastle Town, but has taken so little Notice of it, that she can give no Account of its Extent, either as to Length or Breadth.

Thomas James, a Pilot, aged 49, [Lib. II. fol. 12. Int. 6. fol. 16.]

Is acquainted with the Town of Newcastle, situated in one of the three Lower Counties, but knows not in which, being unacquainted with the Divisions thereof. He believes the said Town, in its Buildings, is about half a Mile in Length, and half a Mile in Breadth, but whether the Limits of the Town extended beyond the Buildings of it, or not, does not know.

41.

Samuel Ogle, the Defendant's Governor, [Lib. G. fol. 218. Int. 17. fol. 237.]

That the first Time the Defendant had any Account, of the Proceedings of the Commissioners, for settling the Boundaries of the Provinces of Maryland and Pensilvania, pursuant to the Agreement in Question in this Cause, was, after the Defendant's arrival in Maryland; apprehends that the Defendant was not privy to, or apprized of, what the said Commissioners did, or intended to do, before their first meeting together to execute their Commissions.

Why it was impossible he should; the Commissioners met 6, 7, 30, 31 October, and 1, and 2 November; all that while my Lord was on his Passage; for he swears he arrived in New England in September, and in Maryland on the 14th of the same November.

The same, [Int. 19. fol. 239.]

That to the best of this Deponent's Remembrance, when the Defendant was first informed of the Difference in Opinion between the Commissioners, touching the Circle to be drawn pursuant to the Articles of Agreement in Question in this Cause, the Defendant declared, he had left the Affair to be settled by his Commissioners, as this Deponent believes, that the Declaration aforesaid, was agreeable to the Intention of the Defendant.

The same, [Int. 18. fol. 238.]

That he believes that a Letter was wrote, by the Defendant, during his stay in Maryland, to the Governor of Pensilvania; and that the Purport of the said Letter was to propose a Meeting of the Commissioners, of the two Provinces at Joppa, after the Dispute had arose about the Commissioners of Pensilvania not meeting at Newcastle according to Adjournment; believes the said Letter was received by the said Governor, because the Commissioners of both Provinces met, according to the Proposals in the said Letter at Joppa.

Yes; and pending this Appointment of my Lord's, my Lord

himself sends Parson Hugh Jones, his Mathematician, to post printed Advertisements on the Borders of the three Lower Counties, to draw off our Tenants.

A Worthy Action of the Defendant.

And a Worthy Action to be executed by that Tool of his, the Parson, to remove his Neighbours Landmarks, and draw off his Tenants.

42.

Samuel Hollingsworth, [Lib. H. fol. 29. Int. 1. add. fol. 33.]

Our Witness, cross-examined, says he has once been at a Ferry over Susquehanna River.

John Musgrave, our Witness also, but cross-examined, [Lib. H. fol. 34. Int. 1. add. fol. 38.]

Knows something of Susquehannah River. Is not acquainted with the mouth of it, but believes it falls into Chesopeak Bay. He knows four Ferries upon the said River, some of which he believes lie to the Northwards, and some to the Southwards, of the City of Philadelphia: But is unacquainted with the lower Parts of said River. That the said River is, (where he is acquainted with it) generally about one Mile wide. Has heard that the said River is, sometimes, fordable, both to the Southward and Northward of Philadelphia.

So that, as long as there are Ferries at this River, that our Commissioners were not obliged to swim over it, there could not possibly be any other Inconvenience in going down to Joppa, in order to fix a Center in the middle of Newcastle Town. For this notable Examination is to be used to that purpose.

43.

Samuel Ogle, [Lib. G. fol. 218. Int. 16. fol. 237.] Benjamin Tasker, [Lib. G. fol. 290. Int. 16. fol. 297.] John Ross, [Lib. G. fol. 303. Int. 16. fol. 311.]

All say that the Exhibit markt No. 7. contains a full and true Account of the Proceedings of the Commissioners for carrying the Agreement in Question into Execution, at their several Meetings had for that purpose. Only Mr. Ross speaks to it but from 3d September, 1733, that being the first Meeting he was present at.

A very concise way of giving their Account; whereas we have proved, by Examination in Detail, what passed at every Meeting, upon the 26 several Days; on many whereof, the Commissioners met twice in a Day, Morning and Afternoon; and this is, in Effect, drawing up an Affidavit

(or less) privately, and then swearing, before the Commissioners in the Cause, that that Paper, ready drawn up, is true; but which, surely, is not the Way of being examined in Chancery.

Samuel Ogle, [*Lib. G. fol. 218. Int. 20. fol. 240.*]

That he was one of the Defendant's Commissioners for executing the Articles, and the Exhibit markt No. 8, and endorsed Copies of several Papers exchanged and delivered by and between the Commissioners, which he has carefully compared and examined with the originals of which they purport to be Copies, and they are true Copies of the Originals, and believes that the Originals, of which the Papers aforesaid are Copies, were exchanged and delivered by and between the Commissioners on behalf of the Plaintiffs and Defendant; and believes all the Persons who subscribed their Names to the original Papers were Commissioners on behalf of the Plaintiffs and Defendant; and believes he has seen the Persons whose names are subscribed to the Originals write their Names; and that their Names subscribed to the said Original Papers are of their proper Hands. And believes that the original Paper of which the Part of this Exhibit mark'd No. 1, is a true Copy, is the Hand-writing of Robert Charles, one of the Plaintiffs Commissioners, having often seen him write, and received several Letters of his writing.

Benjamin Tasker, [*Lib. G. fol. 290. Int. 20. add. fol. 298.*]

To the like Effect.

John Ross, [*Lib. G. fol. 303. Int. 20. add. fol. 312.*]

To the like effect, only he speaks to those only which were dated upon, or after the 3d of September, 1733.

To be sure, where the Defendant's Commissioners delivered Papers to our Commissioners, they could only prove Copies of those Papers, so delivered from themselves; but, as I understand these Depositions, they have not done that; for, they have kept in Maryland the original Papers which their Commissioners received from our Commissioners, and they have also kept the original Copies of the Papers which their Commissioners delivered to ours, and have sent us only examined Copies of both, over here, as Exhibits.

44.

The Defendant's Proof of his Application for a Grant in August, 1731.

John Sharpe, [*Lib. F. fol. 14. Int. 14. fol. 52.*]

Knows, and was privy to, the Application, made by the De-

feudant, to his Majesty, for a Confirmatory Grant of the 3 Lower Counties, after the Execution of the Agreement; and the said Application was made by Petition, by the said Defendant, to his Majesty in Council, which Petition was presented, in the beginning of the Month of August 1734, to his best Remembrance and Belief as to the Time; and saith that the Defendant, and this Deponent apprehended and believed, that two of the said Plaintiffs, as well as Mr. Paris their Agent and Solicitor, were then in England; but saith that the said Defendant, and this Deponent, were, soon after, informed that the Plaintiff John Penn had, some short Time before, left England; but such his Departure was in a private manner, and not publicly known; but that one of the said Plaintiffs, and the said Mr. Paris, Agent or Solicitor for all the Plaintiffs, were then, as this Deponent believes, in England; and saith that the Defendant did, (as the Deponent verily believes) apprize Mr. Paris, of his the Lord Baltimore's Intention of making the said Application, before he made the same; and saith that the said Petition being, by order of Council, dated on or about 8th August, 1734, referred to the Consideration of the Lords Commissioners for Trade and Plantations, to consider the same, and to report their Opinion thereon, the said Petition and Order were, on or about the 28th of the same August, to the best of his Remembrance and Belief, as to the Time, laid before the said Lords Commissioners; and, the very next Day, (as this Deponent verily believes) Notice was given, pursuant to their Lordships' Directions, to the said Mr. Paris, of the said Petition being referred to them. And saith that (as he believes) the said Mr. Paris had due Notice of all the Proceedings, which were afterwards had, on the said Petition, and appeared and attended their Lordships in opposing the said Petition, both by himself, and Council, for and on behalf of the said Plaintiffs; and that one of the Plaintiffs, in Person, also, attended their Lordships thereon; and Mr. Paris presented a very long Petition to his Majesty in Council, on the behalf of the Plaintiffs, praying, amongst other things, that the said Petition of the said Lord Baltimore, might be dismissed.

NOTE—It is my Lord Baltimore's Misfortune to have his Answer falsified by every one of his Witnesses; for he swears (for once) the Truth, at fol. 392. That Paris delayed to lay the Plaintiff's Title before the Lords of Trade, from time to time, and at last declined it, or appearing in Support of their pretended Right, and only stood by to take notice of what past, and what was offered by the Defendant and his Council. And to the like Effect is said by the Lords of Trade's Report also.

45.

The Defendant's Proof of Exhibits in England.

Hugh Hamersley, Mr. Sharpe's Clerk, [Lib. F. fol. 57. Int. 12. and last fol. 59.]

Says that the produced Petitions, No 1. 2. 3. 4. 5. 6. 7. 8. 9. are true Copies of the original Petitions, remaining in the Council-Office, by him examined with the original Petitions there remaining. And that the Papers annex to the said Petitions, No 1, and No 3, are true Copies of the Papers annex to such original Petitions, having carefully examined them. And that the Paper-Writings, No. 10. 11. 12. 13. 14. 15. 16. 17. are true Copies of original Orders, recorded in the Register-Books of the Council-Office, by him carefully examined. And that the Paper No. 18, is a true Copy of the original Report of the Lords of Trade, remaining in the Council-Office, with which he examined the same. And that the Paper No 19, is a true Copy of the original Order, whereof it purports to be a Copy, having carefully examined it with such original Order at the Plantation-Office, as the same remains amongst the old Records there; And that the Papers No 20 and No 21, are true Copies of the original Papers, whereof they purport to be Copies, having examined the same with the original Papers at the Plantation Office, as the same remain lodged or deposited there. And that the Paper-Writing, No 22, is a true Copy of the original Bill signed by Sir R. Sawyer, having compared the same therewith, as it remains deposited at the Signet Office, Whitehall. And that the Words following (Expedited the 16th Day of April, 1683, per Morice) wrote at the foot of such Copy, is a true Copy of an Endorsement on such Original. And that the Paper-Writing, No 23, is a true Copy of an Entry, made and entred in a Book or Register belonging to the Privy Seal Office at Whitehall. And knows of nothing else that will make for the Defendant's Advantage, except that he has made careful and diligent Search and Enquiry at the Rolls-Chapple, and of Mr. Henry Rooke the Clerk of the said Chapple, who has the Custody and Care of the Rolls and Records there kept, in order to find out and discover whether any Grant or Letters Patent ever past the Great Seal, in pursuance of the said Bill or Draft of a Grant No 22, but has not been able to find any such Grant amongst the Rolls and Records of the said Chapple, or any Enrollment thereof, and has been informed by Mr. Rooke, and believes to be true, that Mr. Rooke has made diligent Search, but has not been able to find the same, or any Entry or Memorandum thereof, in any of the Books or Registers belonging to the said Chapple, and that he therefore believes no

such Grant ever did actually pass the Great Seal, for that, if the same had past the Great Seal, it ought to have been regularly enrolled in the said Chapple of the Rolls.

NOTE—As to his No 19, the Plantation-Office is not the Place, but the Council-Office is, for original Orders of Council. I suppose that is the Copy of the Order about Clayborne and the Isle of Kent; If so, am surprised that Mr. Sharpe, who knows the State of that Order full as well as I do, would let his Clerk call that unauthentick Paper at the Board of Trade the Original Order.

46.

We come now to the Gist of the Cause. The Defendant, fol. 268, 269, says he believes the Plaintiffs, knowingly and designedly, took Advantage of his Ignorance and Want of Knowledge of the several Places mentioned in the Map or Plan, and of the proper Situation and Distances thereof, for that, in the said Map, which was so made use of as a Guide in making the Agreement, there is a Place described and said to be Cape Hinlopen, in which Place there is no such Cape; And that the Place, described by the said Map to be Cape Cornelius, is the true Cape Hinlopen, originally so called by the Dutch, and so described in their Maps; Which was a great Imposition on the Defendant, and misled him, in regard the East and West Line, that was agreed to be drawn across the Peninsula, was to begin, on the East Part of the Place in the said Map called Cape Hinlopen; but, ought to have been from that Place only which in the said Map is called Cape Cornelius.

This being the Deceit put upon him, by his own Map I beg you would turn to his Map, and then take his own following Evidence, which do afford (I think) the very strongest and clearest Evidence against him that the Plaintiffs themselves could possibly wish or desire.

Margaret Simpson, aged 69, the Defendant's own Witness only,
[Lib. G. fol. 194. Int. 12. addit. fol. 198.]

Says, that she, about 46 Years ago, when she lived in Maryland, heard of a Place called Cape Henlopen or Inlopen, at or near Phenix's Island; And hath, since her residing at Lewis-Town, heard of a Place called Cape Cornelius about 3 or 4 Miles from Lewis-Town aforesaid, and of a Place called Cape May, opposite to said Cape Cornelius; and that, near Phenix-Island, there was, as she heard, a Brass or Copper Plate, or Brass or Copper Nails, on a Tree; and that for forty Years past, she has often heard the People of Maryland aforesaid, and of Sussex

County aforesaid, dispute, and offer to lay Wagers, some that Cape Henlopen was near Phenix's Island aforesaid, and others, that the Cape near Lewis-Town was called Cape Henlopen.

NOTE—To obviate that very Difficulty or Doubt, on account of the Names being transferred, the Articles express it, by a double Description, Cape Henlopen South of Cape Cornelius.

John Fleaharty, of Maryland, Planter, the Defendant's own Witness only, aged 102, [Lib. G. fol. 145. Int. 14. fol. 145.]

He is acquainted with some of the Places named in the printed Plan; And that he never heard of any Place or Cape called Cape Cornelius, till within these 6 Months. But that the Place, markt in the said Map for Cape Cornelius, is the Place where the Whorekill Town, settled by the Dutch, was built, opposite to Cape May, and is the Place this Deponent heard the English call Cape Inlopen, [Hitherto he seems not much for us, but he amply repays us] And that, to the Southward of Indian River and St. Martin's Creek, which St. Martin's Creek is in Somerset County in Maryland, there is also a Place called Cape Henlopen. That he is not certain of the Distance between the Places markt Cape Cornelius and Cape Hinlopen, but supposes, upon a direct Line, it is about 12 Miles. This Deponent does not know how it came to be called Cape Hinlopen, but has heard that the Dutch settled the Whorekills, before Maryland or Virginia was settled by the English.

This very antient Witness sets out finely for the Defendant indeed; He says the English call the upper Cape Inlopen but that there is a Place, where? South of Indian River and St. Martin called Cape Henlopen, and that the Dutch settled first, before the English.

Charles Hilliard, aged 63, the Defendant's own Witness only, [Lib. G. fol. 158. Int. 14. fol. 166.]

Knows several Places mentioned in the Plan which lie between the City of Philadelphia and Lewes Town, which is near the Capes of Delaware, and that he has been at Lewes-Town, and has seen a Point of Land which is called the Cape, which lies, on the other side of a Creek, but, being not skilled in Geography, can't say whether the Places laid down in the said Exhibit are rightly delineated, or not.

The same, to the 12th additional Interrogatory, fol. 168.

Has heard of a Place called Cape Hinlopen, which lies to the Southward of Indian River, near an Island, the Name of which he does not remember; The said Cape was first so called by the Dutch; And that he has heard of the said Cape Henlopen from his Father, who was a Sea-faring Man, and lived at St. Martin's Creek or River, near Indian River aforesaid. This is better still.

Martha Johnson, the Defendant's own Witness only, uncertain of her own Age, but believes 72, [Lib. G. fol. 210. Int. 12. add. fol. 212.]

Lives near five Miles from Lewes Town, the way that is usually rode. She has heard, that a Place, very near to where she lives, was, by the Dutch, called Cape Inlope. And further says, that she thinks she has heard that a Place, at Phenix's Island, was called Cape Henlopen but that the whole appears to her like a Dream.

These are the Defendant's Witnesses, and his own Examinations.

John Miller, of Somerset County in Maryland, Planter, aged 44, the Defendant's own Witness only, [Lib. G. fol. 271. Int. 14. fol. 272.]

Has lookt upon the Plan. Is acquainted with Delaware Bay, and all the Sea-Coast, from Delaware Bay to the Capes of Virginia having been several Voyages into the said Bay of Delaware and along the Sea-Coast. He has taken an Observation at the Place markt Cape Cornelius, and found it to be in 39 Degrees and 5 Minutes North Latitude. That in all the Sea-Charts and Waggoners which he has seen, the said Cape was called by the name of Cape Henlopen, except some few People in Sussex County, who called it by the name of Cape Cornelius. Says, that, at the Place, markt in the said Exhibit Cape Hinlopen, there is no appearance of a Cape, either near or at a distance, the Sea-shore there is near strait, and very low. That the Place, called Cape Henlopen in the said Exhibit, he apprehends, is intended for the Place called by the Inhabitants there Phenix's Island: tho' he thinks, it ought to have been laid down more to the Southward than it is, near the Midway between the Place markt Cape Cornelius, and the Southern Bounds of Maryland. Says, he believes it is from Phenix's Island to Cape Hinlopen, markt Cape Cornelius in the Exhibit, along the Sea-shore, about 23 or 24 Miles. Says, that the Word Henlopen is a Dutch Word, which Language he does not understand. Says, there are several Rivers and Creeks, along the Sea Coast, and in Delaware Bay, which are not laid down in the said Plan [whose Fault was that? It is not our Plan] particularly Seny Puxen, Indian River, and the Whorekill Creek. That, near to the Place markt Cape Cornelius, in the said Plan, there should have been a Bend, and that, afterwards, it should have been laid down straiter than it is in the said Plan. That he has never read the Articles of Agreement between the Parties but if the Southern Bounds of the three lower Counties were to be run, from Phenix's Island, to the Middle of the Peninsula.

described in the said Exhibit, it would extend upon the Possessions of the Defendant, upwards of eight Miles to the Southward, and a considerable Space to the Westwards.

Supposing this was so, yet if the South Bounds went up so high as to the upper Cape, as my Lord contends, then this Witness allows it would extend 16 Miles upon the Possession of the Plaintiffs, and others say 18 Miles; and we shall clearly account for those 8 Miles this Witness talks of.

The same, to the 15th add. Inter. fol. 279.

Has been acquainted with the Sea-Coast, Delaware Bay, and the Country thereabouts, described in the Plan. near 30 Years. Believes that, upon the Tract contained between the Place called Cape Cornelius, and Cape Henlopen. in the said Plan (if Cape Henlopen in the said Plan is intended to be at Phenix's Island) extending the Lines, from both Places West to the Middle of the Peninsula, does contain about 500 Families. [Note, He says this of the whole 23 or 24 Miles.] That the Inhabitants, to the Southward of Indian River aforesaid, have lived under the Government of Maryland; And the Inhabitants to the Northward of Indian River aforesaid, have lived under the Government of Pensilvania. Hath seen several Patents for Lands, from the Lord Baltimore, to the Northward of Phenix's Island, dated in 1677, and the rest bearing Date before the Year 1684. And has also seen two Patents from the Proprietors of Pensilvania, dated 1684. for Land upon Indian River, and on the South Side thereof. That ever since he can remember, [born in 1696] the Inhabitants, on the South Side of Indian River have always paid their Quit-Rents to Lord Baltimore, and his Ancestors, except during the time there was an Equivalent given by the Country to the Defendant for the same. And that he has never heard of any Quit-Rents being paid for the said Land, or any of the said three lower Counties. by the Inhabitants to the Plaintiffs. or their Ancestors.

This is a planter, who has made several Voyages into Delaware Bay; He says, he lives in Somerset County, which is just below Sussex County: and Indian River, indeed, is not easily crost. without a Voyage. But he swears there is no appearance of a Cape at Phenix's Island, either near, or at a Distance, the Sea Shore is very low. Now let us see how their own next Witness contradicts him, as to that last Point, and fortifies all our Witnesses.

Boudoin Robins, of Maryland, Planter, the Defendant's own Witness, only aged but 34. [Lib. G. fol. 282. Int. 14. fol. 282.]

Has lookt upon the Plan, and is acquainted with the Sea-

Coast from the Capes of Delaware to the Mouth of Chesapeake Bay, and from thence, with the said Bay of Chesapeake, as high as Annapolis. Says, that Cape Hinlopen should have been placed in the Plan where the Place markt Cape Cornelius is, as he apprehends; for that he has been a Coaster, eight or ten Years, and has ever understood that Place to have been Cape Henlopen, and has always heard it called so, by those who spoke of it to him. And that the Shore, from thence (excepting a little Bend near the said Cape, about five or six Miles to the Southward of it) is generally strait, and beareth South and by West. Says, he observes that Seny Puxen and Indian Rivers are not laid down in the said Plan, and also Choptank River that runs into Chesapeake Bay. That he can't tell by what Name the Place, markt Cape Hinlopen in the Plan, is called by the Inhabitants, because he does not know its Distance from the Mouth of Delaware Bay. That, in sailing along the said Sea-Coast, towards Delaware Bay, the Land at Phenix's Island, is somewhat higher than the rest of the Land about; But that no cape appears, till you come to Cape Hinlopen lying on the South side of Delaware Bay, and markt in the Plan Cape Cornelius. [Note, There being no real and true Cape or Head-Land, is the very Reason for transferring the old Name to the Place where there is unquestionably a Cape. And this Witness tells you he is a Coaster, and a young one too, of 8 or 10 Years.] He goes on, and says, he has heard it was called Cape Hinlopen by the Dutch, and that the Meaning thereof is inlap. That he thinks the Cape, upon the East Side of the Mouth of Chesapeake, is not truly laid down; and several Islands, Creeks, and Inlets, are omitted in the said Plan, that lie in and run into Chesapeake Bay.

The same, to the 15th add. Int. fol. 288.

That, as there is neither Scale or River mentioned between the said Places markt Cape Hinlopen and Cape Cornelius in the Plan, he cannot, thereby, find out whereabouts the Place, therein called Cape Hinlopen, is intended to be fixt; nor can say how many Families there are inhabiting betwixt that Place and the Place there markt Cape Cornelius; but always understood that the People as far North as Indian River, held their Lands under the Proprietary of Maryland.

Colonel Thomas Colvil, of Maryland, aged 59, the Defendant's own Witness only, [Lib. G. fol. 120. Int. 14. fol. 121.]

Says he is not well acquainted with the Bay of Delaware described in the produced Map, but has been once up and down the said Bay. That he is no otherwise acquainted with Cape Hinlopen, than as is described in the Sea-Charts, or West-India

Waggoners. That he has never heard of any Cape called Cornelius, till within these six or seven Years. He knows not from whence Cape Hinlopen took its Name. That, when they sailed in, by the Cape Hinlopen described in the Sea-Charts or Waggoners aforesaid, they apprehended the Cape lay very near Lewis Town.

This is nothing to the purpose; the Defendant might have had 10,000 Witnesses, who had only seen the new modern Maps, that might have said just the same as Colonel Colvill does.

And these Witeses tell us, to whom the Inhabitants South of Indian River pay their Quit-Rents, but how many are the Inhabitants? Have they proved seven, five, or three, such Inhabitants? I see not the least Proof made by the Defendant, of any one Inhabitant or Settlement, there, made by Maryland; and indeed, it's a low, sandy, unhealthy and unpleasant Place, and will be the last that is settled, whoever it belongs to.

But, what is all this, and more of the same kind, to the purpose? My Lord says, that our Cape Cornelius was the Place originally called by the Dutch, and so described in their Maps, Cape Hinlopen, why then, *sit Liber Judex*: Has my Lord proved any one Map whatever? No. Why has he not? Because they most absolutely falsify his Pretence and lay down both Capes exactly according to his own Map.

Thomas Hynson Wright, of Maryland, Esq., the Defendant's own Witness only, and a Surveyor, aged 52, [Lib. G. fol. 251. Int. 114. fol. 259.]

That he hath lookt upon the Plan, and is acquainted with most of the Land between the main Ocean Delaware Bay, and Chesopeak Bay, as far Northward as Newcastle; and that, after the Agreement made between the Plaintiffs and the Defendant, he this Deponent was employed, by the Defendant's Commissioners, to go down and take a Reveiw of the Cape of Delaware, and the Sea-Side. And that, when he came to Lewes Town, he inquired of several of the principal Inhabitants there, for Cape Henlopen, particularly of William Till, Rives Holt, and one Col-leak, and was shewed, by them, a Point for Cape Hinlopen, at the South Side of the Mouth of Delaware, which seems to be represented in the said Plan by the Cape marked Cape Cornelius; and that the said Cape bore, near East, about 4 or 5 Miles Distance, (as he was informed) from Lewis Town aforesaid; and that, he, afterwards, went, from Lewis Town aforesaid, to the said Cape, and coursed the Sea-side, along with a Compass, to the Mouth

of Indian River, which the Inhabitants there acquainted this Deponent they computed to be about 12 or 14 Miles from the said Cape, and that the Course thereof was very near South; and that, afterwards, he, this Deponent, went to a Place, called Phenix's Island, which the Commissioners aforesaid informed him that the Plaintiffs Commissioners deemed to be Cape Hinlopen, as described in the Exhibit aforesaid. [Why did he not ask there for Cape Hinlopen?] From which last mentioned Place, he run the Course of the Sea Shore, and measured the Distance of the Mouth of Indian River aforesaid; and that Indian River bore about North 9 or 10 Degrees East, and distant about 8 or 9 Miles from Phenix's Island: Saith that, as he went along the Sea Shore aforesaid, he inquired for the oldest Inhabitants there, and by them was informed, that they never knew or heard of any Place called Cape Hinlopen, but that Cape near Lewis Town aforesaid, until the Agreement aforesaid; That the Course of the Sea-shore aforesaid appears to this Deponent to be untruly laid down in the said Exhibit; and that he does not know by what Name the Place marked Cape Hinlopen in the said Exhibit, is called by the Inhabitants there; Hath understood formerly, that the Word Hinlope was Dutch, and that it signified leaping in, and therefore applied to the Entrance of Delaware Bay. Saith, that the said Plan contained in the said Exhibit is incorrectly made. That there are divers Rivers, viz. Nauticoake, Choptank, Chester, and Sassafras, not laid down in the said Map; and that he believes, that, if the said Rivers had been laid down in the said Map, The Tangent Line therein marked, would have intersected the Heads thereof, and would have cut off navigable Waters from Nauticoak and Choptank, if not from the other Rivers. [This is provided for, by my Lord's new Clause, if it does.] And the Reason of such his Belief is, because he traversed the Courses of the Roads, from Lewis Town to Phenixes Island, and from thence, into Queen Anne's County in Maryland, and from thence to Newcastle aforesaid, in order to plat the same, and discover where the Tangent Line would run. Saith, that if the Articles of Agreement aforesaid, were carried into Execution, and the Place called Phenixes Island should be deemed Cape Hinlopen that the Defendant would lose near 300,000 Acres of Land, which he never understood were claimed as Part of the three lower Counties aforesaid.

This Witness does not tell us one single Word, whether there is, or is not, the Appearance of a Cape at Phenix's Island, which would have been very material and natural for him; and, as he was employed, as a Surveyor, in the Service of the Defendant, by the Defendant's own Com-

missioners, purely to enquire for the Cape, and to view the Cape, he certainly must have known or learned, something about it, one way or the other; but he is not asked one Syllable about it.

This man, sent down purposely, on this Errand, enquired at Lewes Town, in the Neighbourhood of the New Cape Hinlopen, of several of the principal Inhabitants, (and he names three only and no more) for Cape Hinlopen, and they shew'd him what is called in the Plan Cape Cornelius, near Lewis Town, and so will 1000 other Persons, now at this Time, do.

He tells what Course the Sea Coast bears, and the Distance of several Places,

And he inquired of the oldest Inhabitants, and was informed by them, (but does not name any one single Person of them) that they never heard of any Cape Hinlopen, but that near Lewes Town.

What Pity it is, this Gentleman, in his Search and Enquiry, had not found out any one of the many Maryland Witnesses, and Sussex County Witnesses both, which the Defendant and the Plaintiffs found out, and have examined all of whom knew, and could have told him very well, of another Cape Hinlopen, at Phenix's Island, and which they have all sworn to in this Cause.

You'll please to observe how cautious this Man is, he does not pretend that my Lord is possessed of, or has a single Tenant upon the 300,000 Acres which he speaks of.

Governor Samuel Ogle, of Maryland, aged 40, [Lib. 6. fol. 218. Int. 14. fol. 226.]

That he is acquainted with the upper Part of Chesopeak Bay, and the Rivers therein, and the Country about it, described in the Exhibit or Plan; and that he lookt upon the said Map or Plan to be very imperfect and false; There being some Rivers wanting, and others wrong designed and described. That, from the best Information he has been able to get, he is persnaden Cape Henlopen is wrong laid down in the said Exhibit; and that, where Cape Hinlopen is laid down, in the said Exhibit, there is not the least Appearance of a Cape. And that he apprehends, from the best Information he has been able to get, Cape Henlopen should be laid down, where Cape Cornelius is laid down, in the said Exhibit; and that, for about 20 Miles to the Southward of the Place which this Deponent apprehends to be the true Cape Hinlopen, marked in the Exhibit Cape Cornelius, there is a flat Shoar, and no Appearance of any other Cape. Saith, that he really believes the Exhibit aforesaid was con-

trived, on purpose to deceive the Defendant, and that the Plaintiffs were privy to the Falsities and Misrepresentations (before the Execution of the Articles aforesaid) therein made; and that it was artfully conveyed into the Defendant's Hands, by the Plaintiffs or some of their Friends. The Reasons why the Deponent believes the said Map was not sent from Maryland to the Defendant, are, that he hath heard the late Governor and Mr. Philemon Lloyd, Secretary of Maryland, who had the principal Management of the Defendant's Affairs concerning the Boundaries of that Province, often declare that they had no hand in the making, or sending it, nor could he ever learn that they, or any other Gentleman in Maryland, ever heard of Cape Henlopens being where it is laid down in the Exhibit, before the Map, of which the Exhibit is a Copy, came into Maryland with the Articles of Agreement; and that the Deponent can't conceive how any Gentleman in Maryland, could ever think of placing Cape Hinlopen any where but at the Whorekills, since in the Deed of Feoffment from the Duke of York to Mr. Penn, it is called Cape Henlopen, alias the Whorekills; and the Deponent hath never heard of any Dispute made about the Seituation of the Whorekills.

This Gentleman who, upon Oath, does not believe only, but absolutely knows, the Heart of Man, (even at first Sight) and how much they know, and how little they know, happens to be wonderfully out in what he is persuaded of, and in what he apprehends, (for those are the governing Words of the former Part of his Deposition as to its being a flat Shoar, and there not being the least Appearance of a Cape. For his Perswasions and Apprehensions have the Misfortune to be flatly contradicted by many of his own Fellow Witnesses, (but not Governors) and by many of ours likewise, all of which swear the direct contrary.

2dly, As to his real Belief, 1st, That the Plan was contrived to deceive the Defendant; 2dly, That the Plaintiffs were privy to the Falsities in it before the execution of the Articles; and, 3. That it was artfully conveyed into the Defendant's Hands, by the Plaintiffs, or their Friends, any one of these 3 Things proved, had been exceedingly material, but no Step to prove any one of them, nor, any one Reason given, why he believes any one of those Things.

My Lord himself, and his Solicitor, both admit that the plan was sent to my Lord by his own Agents, whoever they had it from; but this Man goes higher, and believes that the Plaintiffs, or their Friends, conveyed it artfully into the Defendant's Hands; so that he out-does, and

contradicts, his Master, and all, without the least Reason given why he believes this.

Well, but he swears he has some Reasons to believe another distinct Matter; namely, that the Map was not sent from Maryland; and we will examine those Reasons, and see whether they are Reasons to believe that other Matter from. Why first, he has asked two single Persons, the late Governor and the Secretary, and they two told him they had no Hand in making or sending it. But has he examined them as Witnesses? No. Does he say either of them is dead? No. Suppose they told him what was false! Or, suppose they told him true, Has he asked my Lord's Surveyors General, whose Business it was to make Maps and Plans? No. Can't my Lord tell who it was that he had that Plan of his own Province, from? Does my Lord, or any one else, so much as pretend to name, or say, who the Person was, that delivered the Plan to him? No. Has he examined to prove that that Map was ever seen or heard of, in Pensilvania? No. Had not they an Interrogatory framed, on purpose to examine into that Matter? Yes, they had, their 5th cross Int. H. Fol. 176. but they could find nobody proper to be examined upon it.

But 2dly, This Witness has another Reason to believe the Map could not be sent from Maryland; for he could never learn that the late Governor, and the Secretary, or any other Gentleman in Maryland ever heard of Cape Hinlopen's being where it is laid down in the Map. What Pity it is a Man, of so great Knowledge, should be so unwilling to learn, what so many of his own, and of our Witnesses (many of Maryland) could have told him, and have sworn, that not only the particular Place was called Cape Henlopen by the Dutch, but that the whole Country thereabouts was called, after its Name, Hinlopen?

He can't conceive that any Gentleman in Maryland could ever think of placing Cape Hinlopen any where but at the Whorekills; since, in the Duke's Feoffment, it is called Cape Hinlopen alias the Whorekills; and he never heard of any Dispute about the Scituation of the Whorekills; but are not we, at this Instant, and himself in this very Argument, considering the Extent of that large District, called first Whorekills, and afterwards Sussex County? And, however it may be expressed in the Duke's Feoffment, yet, surely, to Persons, who have seen the Dutch Maps of 1663, and the English Map in 1671, both which laid down Cape Henlopen and Cape Cornelius, and laid down Cape Hinlopen at the Place really called by the

Dutch Cape Hinlopen, and who know (as the Witnesses do) that that Place was called Cape Henlopen by the Dutch, it would be no sort of Impropriety for a Marylander to think that Cape Hinlopen lay, at a Place where he knew it did lay; and any Inaccuracy, if there was any, in the Duke's Feoffment in 1682 (and which is helped by the present Articles) would not determine a Man to make a Map of a Country knowingly wrong, because that the Duke of York had, once, inaccurately expressed a Part of that Country, in some Deed of his, dated in 1682.

But, if he will have the Duke of York to explain where Cape Henlopen lay, that was so called by the Dutch, they may find it, in very clear explicit Terms. In the Patent which the Duke was obtaining, the Beginning of the very next Year 1683; which describes it exactly according to our Evidence; and that Patent the Defendant himself has proved a Copy of, from the Signet Office, in this Cause.

The Defendant has cross examined eight of our Witnesses, upon some printed Plan or Map marked A, which I suppose was a Copy of his own Plan annexed to the Articles.

John Teague, Lib. II. fol. 43. Int. 3. fol. 45. Elizabeth Morris, Lib. II. fol. 26. Int. 3. fol. 28. John Musgrave, Lib. II. fol. 31. Int. 3. fol. 36. William Peterson, Lib. II. Fol. 7. Int. 3. fol. 10.]

Who all say they have looked upon that Exhibit, and don't understand it.

Samuel Hollingsworth, aged 67, [Lib. II. fol. 29. Int. 3. fol. 31.]

Says he is unacquainted with the lower Part of Delaware, and tho' he has heard of Cape Hinlopen, Cape Cornelius, and the Whorekills, can give no particular Account of them. He does not remember to have heard of Phenix's Island, [Note, he lives in Chester County in the upper Part of Pensilvania] That he knows Christiana Creek, and takes that Creek in the Map, next above Newcastle, to be designed for it.

John Rambo, of New Jersey, Farmer, aged 79, [Lib. II. fol. 19. Int. 3. fol. 21.]

He has looked upon the Plan, and he has never heard of any Cape called Cape Cornelius; but that the Place, therein so marked in the Place which he has always understood to have been called Cape Hinlopen since he has been acquainted with those Parts. That he is acquainted with the Whorekill Creek, which runs into the Land, a little within the Cape marked in the Exhibit Cornelius; but knows nothing of Phenix's Island.

That he knows Christiana Creek, which lies, as he believes, 3 or 4 Miles above Newcastle.

NOTE—This Witness, a Country Farmer, has just told us, in the next preceeding Interrogatory, that he was born and lived his first 20 Years up at Philadelphia, and the Residue of his Time in another distinct and more remote Province, New Jersey, and was never but one Winter a Whaleing at the Places enquired after, and that 50 Years ago; and now, they are enquiring into his Knowledge, and his Understanding, these Places.

Samuel Preston, aged 75. [Lib. H. fol. 104. Int. 3. fol. 106.]

Has looked upon the said Plan, and is acquainted with the Places marked therein Cape Cornelius; and has heard of the Place therein marked Cape Hinlopen. Says that the Place therein marked Cape Cornelius has generally, since his knowledge of it been called Inlopen, and is distant from the Place in the said Plan called Cape Henlopen about 25 Miles as he believes; Further says he has seen some Maps wherein the Place called Cornelius in the said Plan, was called by the same Name Cornelius. He knows the Place formerly called the Whorekill Town, and Christiana Creek, and hath heard of Phenix's Island. That the Whorekill Town lies near to the Place in the Plan marked Cape Cornelius Christiana Creek about 5 Miles above the Town of Newcastle. And believes that Phenix Island is about the Place marked Cape Hinlopen. Says that a Creek runs up by the Whorekill Town.

Thomas James, Pilot, aged 49, [Lib. H. fol. 12. Int. 3. fol. 13.]

He has looked upon the Plan, and is acquainted, by sailing into Delaware Bay, with the Place therein marked Cape Cornelius, which is now called Cape Hinlopen. That there is another Place, that has the Appearance of a Cape, to the Southward of the said Cape, which has been sometimes called Cape James, [please to mark it well, for our written Evidence proves that Mr. Penn, so named it in 1682] sometimes Cape Hinlopen, and sometimes the false Cape: but whether this last be correctly laid down, or not, in the Exhibit, he cannot say, there being neither Course nor Distance expressed therein. That he is not acquainted with the Place called Phenix's Island, but has seen the same from the Sea. That he is acquainted with the Place formerly called the Whorekills. That it is situate upon a Creek, formerly called by the Dutch, the Whorekill Creek, about four or five Miles within the Cape marked in the Exhibit Cape Cornelius. That he is likewise acquainted with Christine Creek, which is a Creek situate about 5 Miles above Newcastle in the Exhibit mentioned.

The Defendant, surely, was afraid we should not sufficiently falsify his Answer, and prove our true Cape Hinlopen, and so he takes Care to supply us with more and further Proof of it.

And thus ends all the Proofs: wherein it appears most marvellous that the Defendant, who builds his whole Pretence of Imposition in that his own Map did not lay down Cape Hinlopen where the Dutch Maps did, has never attempted to produce one single Map, to support that Assertion.

Another material Omission on the Defendant's Part is, that he has not proved that original Map which he Produced and marked with his own Hand: and why? It is not that that is wanting, for Paris swears that Mr. Sharpe had it again from Mr. Senex, and Mr. Sharpe now swears that the printed Map is an exact Copy of it. But it is for this Reason, they know (and so Paris swears) that that original Map had many Marks, and Lines, and Notes about it, relating to the Circle, and therefore the Defendant conceals that original Map of his, because it would convict him.

